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ABSTRACT

These curriculum materials about various aspects of the United States Constitution are designed as supplements to high school courses in history, civics, and government. They include 60 original lessons for students, accompanied by lesson plans for teachers, and are divided into five chapters. Chapter I, "Documents of Freedom" includes the Constitution, amendments to the Constitution, amendments proposed but not ratified, and selected Federalist papers. Chapter II, "Origins and Purposes of the Constitution" covers the concept of a constitution, state constitutions, the Articles of Confederation, the Constitutional Convention, federalists and anti-federalists, the Bill of Rights, and the timetable of main events in the making of the Constitution. Chapter III, "Principles of Government in the Constitution," deals with the concept and operation of federalism, separation of powers, the judiciary, and civil liberties. Chapter IV, "Amending and Interpreting the Constitution," deals with amendments, constitutional conventions, political parties, and challenges to the Constitution. Chapter V, "Landmark Cases of the Supreme Court," analyzes 20 crucial Supreme Court cases. (IS)

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ED258891

Lessons on the Constitution

Supplements to High School Courses in American History, Government and Civics

by John J. Patrick and Richard C. Remy

for Project '87, a joint effort of the
American Historical Association and the American Political Science Association

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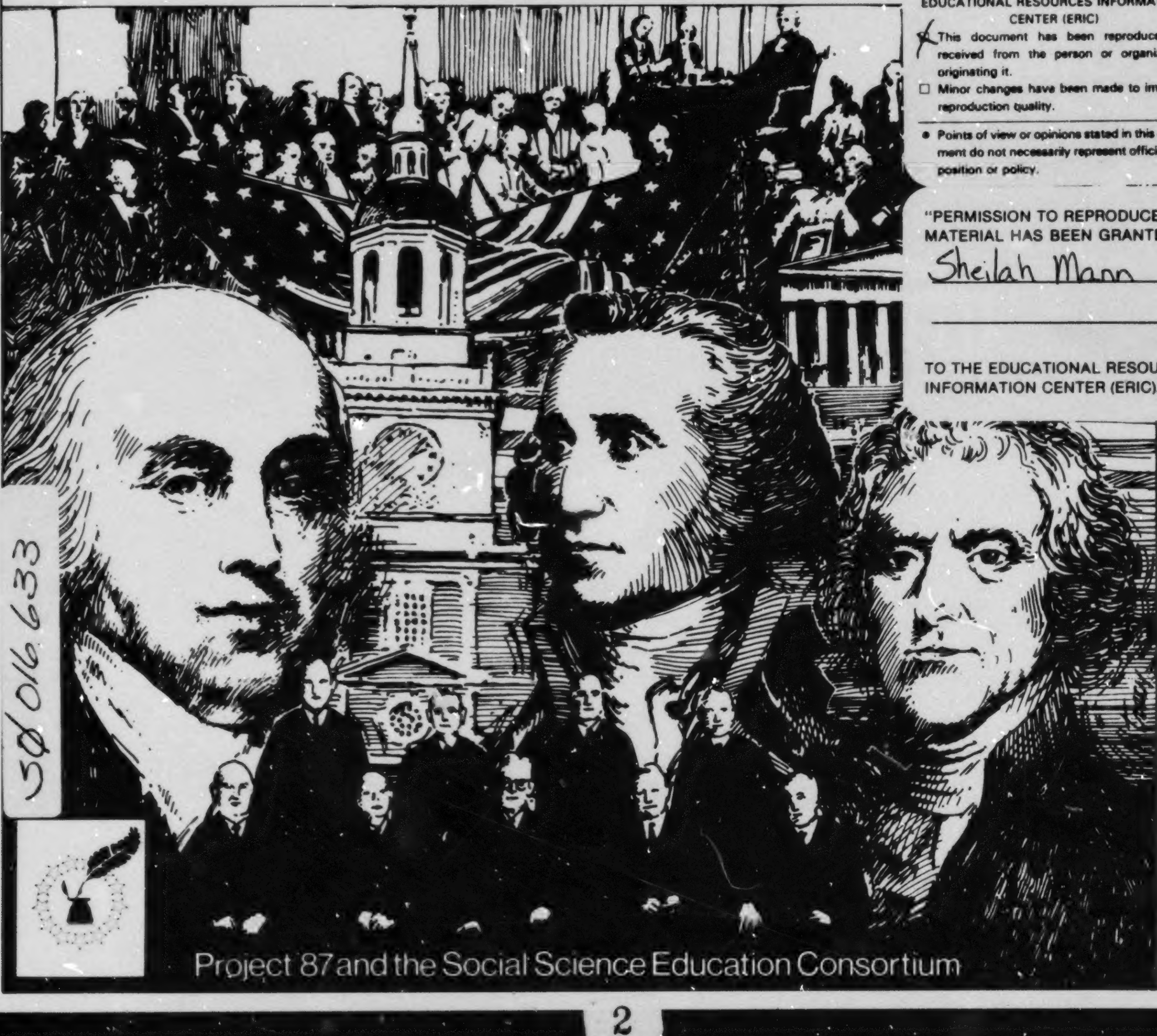

SO 016 633

Project '87 and the Social Science Education Consortium

LESSONS ON THE CONSTITUTION: Supplements to High School Courses in American History, Government, and Civics

by

John J. Patrick and Richard C. Remy

for

Project '87

Consulting Historical Editor: Paul Finkelman

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FOREWORD

Project '87, a joint effort of the American Historical Association and the American Political Science Association, is proud to sponsor this book, *Lessons on the Constitution,* for students, teachers, and curriculum developers. The *Lessons* are an integral part of Project '87's program on behalf of the Constitution's Bicentennial. They are meant to be supplementary instructional materials that can be easily adapted by teachers for use by their students in classes on civics, American history, and American government. Additionally, this book is a resource for other organizations and individuals engaged in efforts to enhance teaching about the Constitution.

The *Lessons* were prepared in order to meet the need for more instruction on the United States Constitution, its history and theory. The process used to develop the *Lessons* has engaged scholars, specialists in instructional design, and teachers. This process involved a planning phase and a lesson design and writing phase, followed by a field test and evaluation phase. Many people and several foundations have participated in this process, and it is important to acknowledge their assistance.

The idea to develop lessons on the Constitution can be credited to a proposal made at a Project '87 conference, "Teaching About the Constitution," which was supported by a grant from the William and Flora Hewlett Foundation. Howard D. Mehlinger, Dean, School of Education, Indiana University, organized and hosted the conference at Indiana University. The conference featured assessments of the coverage of the Constitution in current textbooks and instructional programs and also assessments of what young people and adults know about the Constitution. Conference papers were published by Project '87 in a monograph, *Teaching About the Constitution in American Secondary Schools,* edited by Howard D. Mehlinger (1981). The recommendations of the conferees are included in the monograph. A prominent recommendation called for Project '87 to:

> Produce and disseminate a teacher's sourcebook on teaching about the Constitution that is designed to support existing courses in civics, American history, and American government. (p. 149)

Following this recommendation, Project '87 submitted a proposal, accepted by the National Endowment for the Humanities, for a project to prepare a collection of lessons on constitutional history and government for teachers to use in their high school courses on American civics, government, and history.

The lessons were written by John J. Patrick, School of Education, Indiana University, and Richard C. Remy, Mershon Center, Ohio State University. John Patrick and Richard Remy were invited to serve as coordinators of the project because of their expertise. They have been public school teachers and educators of teachers. Professor Remy is a political scientist who has written textbooks and other curriculum materials in civics and government for use in high schools, middle schools, and elementary schools. Professor Patrick is a scholar of social studies education who has also written textbooks and other curriculum materials in history, civics, and government for use in high schools, middle schools, and elementary schools. John Patrick and Richard Remy worked with a team of secondary school teachers to develop the lessons. This team included:

Martha Cornelius, South Vigo High School, Terre Haute, Indiana
Vivian Miller, Bloomington High School, North Bloomington, Indiana
Roland Sloan, Haworth High School, Kokomo, Indiana
Steven Toth, Roosevelt High School, East Chicago, Indiana

Charles S. White, a doctoral student in social studies education at Indiana University, also helped in the design and development of the lessons.

A panel of scholars and curriculum supervisors reviewed a plan for the book and the subsequent drafts of the *Lessons.* The review panel, which provided oversight and formative evaluation of the book, included:

Louis Grigar, Program Director for Social Studies, Texas Education Agency
Paul Murphy, Department of History, University of Minnesota
Jack Peltason, Chancellor, University of California, Irvine
Mary Jane Turner, Associate Director, Law in a Free Society

Sixty lessons were drafted by fall, 1982. Twelve teachers—including the four who helped design the lessons—field tested fifteen lessons in the fall term and provided detailed comments on their utility and effectiveness.

The eight other teachers who participated in the field tests were:

Frederick Drake, Dwight High School, Dwight, Illinois
Constance Holland, Bloomington High School South, Bloomington, Indiana
Dennis Horn, Wabash High School, Wabash, Indiana
Ward Meyers, South Vigo High School, Terre Haute, Indiana
Jane M. McMeekin, Westerville South High School, Westerville, Ohio
J. Mark Stewart, Mifflin High School, Columbus, Ohio
Sandra J. White, Beechcroft High School, Columbus, Ohio
William Zeigler, Upper Arlington High School, Columbus, Ohio

Two other social studies curriculum developers then evaluated the instructional design of the lessons:

Mary Hepburn, Institute of Government, University of Georgia
Frederick Risinger, Coordinator for School Social Studies, Indiana University

Each of the lessons was also reviewed by at least one constitutional scholar. The scholars who reviewed the lessons include:

Judith A. Baer, Department of Political Science, University of Arizona
Maxwell Bloomfield, Department of History, The Catholic University of America
Walter E. Dellinger, School of Law, Duke University
Murray Dry, Department of Political Science, Middlebury College
Werner Feig, Scarsdale Public Schools, Scarsdale, New York
Peter C. Hoffer, Department of History, University of Georgia
Harold Hyman, Department of History, Rice University
Joan M. Jensen, Department of History, New Mexico State University
Morton Keller, Department of History, Brandeis University
Milton Klein, Department of History, University of Tennessee
Ronald M. Labbe, Department of Political Science, University of Southwestern Louisiana
Jacob W. Landynski, Department of Political Science, New School for Social Research
Michael Malbin, American Enterprise Institute
David Mayhew, Department of Political Science, Yale University
Gerald D. Nash, Department of History, University of New Mexico
Mary Cornelia Porter, Department of Political Science, Barat College
Harold L. Pratt, Department of History, Loyola University of Chicago
Eva R. Rubin, Department of Political Science and Public Administration, North Carolina State University
Harry N. Scheiber, School of Law, University of California, Berkeley
Aviam Soifer, School of Law, Boston University
Robert Steamer, Department of Political Science, University of Massachusetts, Boston
Mary K. B. Tachau, Department of History, University of Louisville
G. Alan Tarr, Department of Political Science, Rutgers University
C. Neal Tate, Department of Political Science, North Texas State University
Richard A. Watson, Department of Political Science, University of Missouri-Columbia

We also owe special thanks to Mary K. B. Tachau, who reviewed the *Lessons* and provided important source material for the lesson on "The Whiskey Rebellion."

Paul Finkelman served as consulting historical editor for the entire book. Professor Finkelman, a fellow at the Harvard University Law School in 1982-83, worked on the lessons while he was an Associate Professor of History at the University of Texas, Austin. He is now at the State University of New York, Binghamton. Finally, Emma Lou Thornbrough, McGregor Professor of History at Butler University reviewed the complete set of fieldtested lessons. While the *Lessons* were being edited, they were also demonstrated at workshops and conferences for teachers and curriculum supervisors. John Patrick and Richard Remy were invited to lead workshops, for example, at the following conferences:

- Annual meetings of the National Council for the Social Studies, 1982, 1983, and 1984.
- 1983 and 1984 meetings of the Rocky Mountain and Great Lakes Regional Conferences of the National Council for the Social Studies
- Various school districts such as Colorado Springs; Grand Junction, Colorado; Minneapolis; Montgomery and Carroll Counties in Maryland; Long Island, New York; Columbus, Indiana; and Huntington, West Virginia.

Paul Finkelman presented the lessons at regional conferences for teachers at Austin, Texas, and Los Angeles, California. The conferences were conducted by the American Historical Association and supported by the National Endowment for the Humanities.

We appreciate the interest and comments we have received from the teachers who attended these meetings.

Project '87 is also grateful for a contribution from Scott, Foresman Publishing Company toward the costs of printing this book and to the enthusiasm for the materials that has led the Social Science Education Consortium to undertake the publication and distribution of *Lessons on the Constitution.* Finally, Project '87 and the authors wish to express their gratitude to Kay K. Cook for her diligent and careful editorial work on this volume.

Sheilah Mann
Director, Project '87
1985

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INTRODUCTION

From the 1790s until the present, American schools have been a major force in developing citizens' understanding of the Constitution. Current curriculum guides and textbooks for high school American history and government courses treat the origins, development, and main principles of the Constitution. However, recent curriculum studies have indicated a need for improvement of education about the Constitution. In view of these studies, Project '87 sponsored development of this book,* Lessons on the Constitution: Supplements to High School Courses in American History, Government, and Civics.

CONTENT AND PURPOSES OF THE LESSONS

These curriculum materials about various aspects of the U.S. Constitution are designed as supplements to high school courses in civics, American history, and American government. There are 60 original lessons for students, accompanied by lesson plans for teachers. **Permission is granted to teachers to make copies of these lessons for use with their students.**

Chapter I features the text of the Constitution, amendments to the Constitution, a list of amendments that have been proposed but not ratified, and selected *Federalist* papers.

Chapter II includes twelve lessons about the origins and purposes of the U.S. Constitution. Chapter III, devoted to principles of constitutional government, includes fourteen lessons. Chapter IV has fourteen lessons, each pertaining to a specific constitutional issue or constitutional change.

Chapter V is directed to "digests" of twenty landmark Supreme Court cases. There are students' worksheets to guide analyses of the digests.

The book is a collection of lessons and lesson plans about constitutional history and principles of government. Teachers of high school American history, government, and civics courses can select and adapt these lessons to duplicate and use in their classrooms. The lessons are related to topics included in the standard basal textbooks. However, the lessons do not replicate textbook content. Nor are they a comprehensive survey of constitutional history, law, and theory. Rather, they are designed to remedy textbook deficiencies, enrich current textbook treatments of key subject areas, and enliven the curriculum with ideas and information that should be interesting and meaningful to students in history, civics, and government courses.

It is important to emphasize that this book is not designed as a comprehensive and coherent survey of constitutional history, theory, and law. Rather, it is designed as a pool of alternative lessons and resource materials that may help teachers to improve education about the Constitution in high school American history, government, and civics courses. Teachers are expected to reproduce and distribute copies of lessons to students in their high school courses.

The main goals of the lessons in this book are to help students:

1. Comprehend more fully the origins of our Constitution.
2. Know the purposes of the Constitution in our political system.
3. Deepen their understanding of main constitutional principles and the operation of these principles in our society and government.
4. Understand the dynamics of formal and informal constitutional change.
5. Examine important constitutional issues of the past and present.
6. Understand Supreme Court decisions of fundamental importance.
7. Apply knowledge of the Constitution to issues, events, and people in the past and present.
8. Develop commitment to the values embodied in the Constitution.

These eight goals conform to long-standing concerns of American civic educators. They also reflect the pervasive influence of the Constitution in American political life. As a symbol, the Constitution is an unchanging expression of the unity, continuity, and ideals of the American nation. As a practical instrument, the Constitution is a dynamic legal framework for popular government. From busing students to setting the limits of presidential power, political leaders and citizens regularly confront constitutional issues that directly affect their lives and the destiny of the nation. Citizens who do not understand the Constitution cannot really know how their government affects them. Of course, knowledge of the Constitution alone is not sufficient to comprehend political reality in the United States. It is, however, a necessary condition for knowing how the government works. In particular, knowing the major ideas of the Constitution enables citizens to understand what the government may do for them, what it may not do to them, and what they may do to sustain civil liberties and the rule of law.

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*Howard D. Mehlinger, editor, *Teaching About the Constitution in American Secondary Schools* (Washington, D.C.: The American Historical Association and the American Political Science Association, 1981).

DISTINCTIVE CHARACTERISTICS OF THE LESSONS

The following eight statements describe distinctive characteristics of the lessons. These characteristics reflect criteria that guided design and evaluation of the lessons.*

1. **Lessons tend to be concise and adaptable to the schedule of typical high school class meetings.** Teaching strategies within the book take the form of lessons. A lesson is a complete instructional activity designed to cover particular content and/or skills and to help students achieve one or more stated objectives.

   Some lessons are linked to one or two others. For example, Lesson III-1 introduces the meaning of a major concept, federalism. Lesson III-2 requires students to use their concept of federalism to interpret episodes about government actions.

   It should be possible to complete most of the lessons in one or two class meetings. Concise lessons, which can be expanded upon by teachers (if they so desire), are usually preferred to very long and complex lessons.

   There are very few lessons in this book that might take as long as three to four class meetings. These few have more dimensions than the others. Even these longer and more complex lessons can be finished satisfactorily in one or two class meetings by not requiring students to do every part of the lessons.

2. **It is likely that each lesson or set of lessons can be used without reference to other lessons in the book.** It is possible for each lesson or short set of lessons to stand alone. Lessons designed to stand alone can be used more flexibly by teachers than lessons which must be used in a particular sequence.

   Some teachers may use most of the lessons. However, most teachers probably will select lessons and sequence them to support their day-to-day curriculum and classroom needs. Thus, the great majority of lessons are designed for use without reference to other lessons in this volume. A few sets include two or three related lessons. However, it is possible to break apart these sets and use the lessons singly.

3. **Each lesson or set of lessons includes a clear statement of purpose(s), well organized subject matter that pertains to purposes, and provision for meaningful student use of subject matter.** Effective curriculum materials help teachers and learners to know what they are expected to do, how they can do it, and when they have done it correctly. Students learn better from lessons that are organized to help them recognize the purposes, means to achieve the purposes, and knowledge of successful achievement.

   Each lesson is introduced with a clear statement of purpose. Students are guided in the acquisition and use of knowledge and skills they are supposed to learn. To demonstrate achievement, students must be able to apply or use facts, ideas, or skills as indicated by lesson objectives. Thus, each lesson includes application exercises, which are connected to the purpose(s) of the lesson.

4. **Lessons encourage active learning—the application of knowledge to completion of various kinds of cognitive tasks.** Active learning refers to the meaningful use of knowledge. Lessons in this book are designed to require organization and interpretation of information, construction of valid generalizations, and appraisal of ideas.

5. **Lessons include numerous examples to illuminate complex constitutional principles.** Lessons dramatize theoretical content by showing the human side of constitutional topics through the use of concrete and interesting examples. Whenever it is feasible, lessons include familiar examples to make abstractions and remote information more meaningful.

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*These criteria and their uses in *Lessons on the Constitution* are discussed in the project conceptualization paper, *Enhancing Education About the United States Constitution: A Project to Develop a Sourcebook for High School Courses in American History and Government.*

However, those who learn only in terms of immediate experiences are likely to be less capable than those with expanded horizons. Thus, the book exposes learners to new ideas and information and enables them to generalize from familiar and tangible events to situations outside their immediate experiences. Good curriculum materials help learners increasingly to expand the range of experiences and events that may be perceived as meaningful to them.

6. **A variety of instructional strategies and techniques are used to create different types of lessons.** Curriculum materials should not require students to follow a single routine during an entire course of study. Instructional variety can promote student interest and motivation. Furthermore, different teaching techniques are appropriate for the attainment of different types of objectives. Different types of learning require different teaching procedures. Thus, the lessons are designed to make an appropriate fit between objectives and teaching procedures. Finally, the instructional variety of these lessons provides teachers with alternatives. The possibility of satisfying a wide range of educational needs is provided.

7. **The subject matter of each lesson pertains to one or more of the book's major goals.** The lessons are designed to supplement and strengthen textbook material on the Constitution. Content that is treated adequately in most standard textbooks will not be used as subject matter in this book. For example, standard textbooks include ample discussions of the "Great Compromise" at the Constitutional Convention. Thus, there is no lesson in this book about the "Great Compromise" concerning representation in Congress. By contrast, most textbooks include little or nothing about decisions at the Constitutional Convention that formed the office of President. Thus, this book includes a lesson about the making of the presidency in 1787.

8. **Lessons are organized and presented within the book so as to help users connect them to the content of commonly used textbooks.** Teachers are not called upon to depart significantly from course objectives and content to use the lessons. Rather, the lessons are designed to help teachers deal more effectively with topics that are rooted in their curricula in American history, civics, and government.

SELECTING AND USING THE LESSONS AND REFERENCE MATERIALS

It is assumed that different teachers will make various decisions about how to use the lessons. Information in this book can be used to guide their decisions.

Each lesson includes materials for students and lesson plans for teachers. **It is expected that teachers will duplicate and distribute copies of the student materials.**

Each lesson plan includes a description of the main points or themes of the lesson, the instructional objectives, and suggested procedures for teaching the lesson. In addition, there are suggestions about connections of each lesson to the content of textbooks in American history, government, and civics. These suggestions provide guidance about how each lesson can be used to supplement the content of standard textbooks.

In chapter V, however, the introduction also guides teachers in their plans for each of the twenty digests of Supreme Court cases. Worksheets to guide student analyses of the cases are included with each digest. Thus, these materials can be used as lessons. However, they also can be used as **reference materials,** because they are convenient sources of information and ideas that can be used to supplement classroom lectures, discussions, or student research activities. Several of the lessons in chapters II-IV might also be used as reference materials, rather than as lessons, if teachers so desire.

Many of the lessons conclude with several application exercises or activities. A particular lesson may have some exercises that are quite simple and others that are more challenging and complex. Some teachers may wish to have all of their students complete all the application exercises at the end of the lesson. Other teachers may not want to spend that much time on a given lesson and thus will use the application activities selectively. Another alternative is to assign easier or simpler exercises to the entire class and to assign more challenging or complex activities only to brighter students. Thus, the more challenging activities would serve to enrich and extend the learning experiences of the brighter students.

Steps in Teaching. Little time is needed to prepare to use a lesson. *To teach a lesson,* follow these steps.

- Read the materials for students and the lesson plan for teachers.
- Make and distribute copies of the student materials.
- Follow the teaching suggestions for opening, developing, and concluding the lesson.

It is important to emphasize that the lesson plans are presented as suggestions, not as prescriptions. It is very likely that many teachers will modify or adapt the lessons and lesson plans to make them more useful in a particular situation. Furthermore, many teachers are likely to alter lesson plans so that they conform to instructional procedures or strategies with which the teachers are more comfortable or are able to use more effectively with their students.

In addition to the lessons, there are various **reference materials.** We begin with the text of the Constitution and the history of its amendments, including those proposed but not ratified.

Copies of several of *The Federalist* papers and papers of the Antifederalists are also included. These primary sources might be duplicated and distributed to particular students or to entire classes. Lessons II-8 and II-9 include exercises and questions to guide analyses of these Federalist and Antifederalist papers. These materials can also be used in classroom lectures and discussions.

A BRIEF LIST OF RECOMMENDED BOOKS FOR TEACHERS

The books listed in the lesson plans pertain to particular themes or points. The books listed below might serve as general references or sources for teachers as they plan and carry out lessons about the Constitution.

Bowen, Catherine D. *Miracle at Philadelphia.* Boston: Little, Brown and Company, 1966. The dramatic story of the Constitutional Convention, May to September of 1787. The clashes, compromises, and achievements of the convention are presented vividly and memorably. This book can be read easily by most high school students.

Burns, James MacGregor. *The Vineyard of Liberty.* New York: Alfred A. Knopf, 1982. This is a story of the origins and shaping of the American Republic, from the Constitutional Convention to the Civil War.

Farrand, Max. *The Framing of the Constitution of the United States.* New Haven: Yale University, 1918. The classic narrative of the day-to-day events at the Constitutional Convention.

Garraty, John A., ed. *Quarrels That Have Shaped the Constitution.* New York: Harper & Row, 1964. Notable historians discuss sixteen landmark cases of the Supreme Court. Each of the sixteen chapters is a very readable story of one significant case, its origins, issues, and constitutional significance.

Hamilton, Alexander, James Madison, and John Jay. *The Federalist,* edited by Roy P. Fairfield. Baltimore: The Johns Hopkins University, 1981. One of the several readily available and inexpensive paperback editions of this classic work on the principles of constitutional government in the United States.

Kelly, Alfred H., Winfred A. Harbison, and Herman Belz. *The American Constitution: Its Origin and Development,* 6th ed. New York: W. W. Norton & Company, 1983. This is the leading college textbook in constitutional history.

Levy, Leonard William, ed. *Essays on the Making of the Constitution.* New York: Oxford University Press, 1969. This is an excellent anthology of varying viewpoints on the forces behind the Constitution.

Lockard, Duane, and Walter F. Murphy. *Basic Cases in Constitutional Law.* New York: Macmillan Publishing Company, 1980. Analyses of several landmark decisions of the United States Supreme Court.

Morris, Richard B. *Great Presidential Decisions.* New York: Harper & Row, 1973. The author discusses critical presidential decisions that have changed the course of American history. State papers in which the decisions were announced and/or defended are included.

______. *Seven Who Shaped Our Destiny.* New York: Harper & Row, 1973. This is a volume of vivid profiles of seven founding fathers: Franklin, Washington, Adams, Jefferson, Jay, Hamilton, and Madison. The influence of these men on the founding of the United States is the main theme of this book.

______, ed. *Encyclopedia of American History.* 6th ed. New York: Harper & Row, 1982. The basic facts of American history are condensed in this volume. It is a valuable resource for teachers and students.

Peltason, Jack W. *Corwin and Peltason's Understanding the Constitution,* 9th ed. New York: Holt, Rinehart and Winston, 1982. A classic account of American constitutional principles, the book is used widely in college courses on the Constitution.

Smith, David G. *The Convention and the Constitution.* New York: St. Martin's Press, 1965. A succinct narrative that anlayzes the principle issues discussed at the Constitutional Convention.

Smith, James M., ed. *The Constitution.* New York: Harper & Row, 1971. An excellent anthology of varying viewpoints on the forces behind the Constitution.

Storing, Herbert J. *What the Anti-Federalists Were For.* Chicago: The University of Chicago Press, 1981. A concise account of the political ideas of the Antifederalists.

Wood, Gordon S. *The Creation of the American Republic, 1776-1787.* Chapel Hill: University of North Carolina Press, 1969. A comprehensive analysis of the political ideas that shaped the American Republic, from the War of Independence to the Constitutional Convention.

CHAPTER I

Documents of Freedom

OVERVIEW FOR TEACHERS

This chapter includes documents of fundamental importance to users of this collection of lessons. Teachers will find the texts included here to be handy reference materials to aid them in planning classroom discussions and lectures. Teachers may also want to reproduce these texts, in part or totally, to distribute to students as reading assignments.

LIST OF ITEMS IN CHAPTER II

I-1. The Constitution of the United States of America

I-2. Amendments to the Constitution

I-3. Amendments Proposed But Not Ratified

I-4. Selected *Federalist* Papers

I-1. THE CONSTITUTION OF THE UNITED STATES OF AMERICA

PREAMBLE

We the people of the United States, in order to form a more perfect Union, establish justice, insure domestic tranquility, provide for the common defense, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America.

ARTICLE I

Section One
Legislative Power

All legislative powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

Section Two
House of Representatives, How Constituted
Power of Impeachment

1. The House of Representatives shall be composed of members chosen every second year by the people of the several states, and the electors in each state shall have the qualifications requisite for the electors of the most numerous branch of the state legislature.

2. No person shall be a Representative who shall not have attained to the age of twenty-five years, and been seven years a citizen of the United States, and who shall not, when elected, be an inhabitant of that state in which he shall be chosen.

3. (Representatives and direct taxes shall be apportioned among the several states which may be included within this Union, according to their respective numbers, which shall be determined by adding to the whole number of free persons, including those bound to service for a term of years, and excluding Indians not taxed, three fifths of all other persons.)* The actual enumeration shall be made within three years after the first meeting of the Congress of the United States, and within every subsequent term of ten years, in such manner as they shall by law direct. The number of Representatives shall not exceed one for every thirty thousand, but each state shall have at least one Representative; and until such enumeration shall be made, the state of New Hampshire shall be entitled to choose three, Massachusetts eight, Rhode Island and Providence Plantations one, Connecticut five, New York six, New Jersey four, Pennsylvania eight, Delaware one, Maryland six, Virginia ten, North Carolina five, South Carolina five, and Georgia three.

4. When vacancies happen in the representation from any state, the executive authority thereof shall issue writs of election to fill such vacancies.

5. The House of Representatives shall choose their speaker and other officers; and shall have the sole power of impeachment.

Section Three
The Senate, How Constituted

1. (The Senate of the United States shall be composed of two Senators from each state, chosen by the legislature thereof, for six years; and each Senator shall have one vote.)*

2. Immediately after they shall be assembled in consequence of the first election, they shall be divided as equally as may be into three classes. The seats of the Senators of the first class shall be vacated at the expiration of the second year, of the second class at the expiration of the fourth year, and of the third class at the expiration of the sixth year, so that one third may be chosen every second year; and if vacancies happen by resignation, or otherwise, during the recess of the legislature of any state, the executive thereof may make temporary appointments (until the next meeting of the legislature, which shall then fill such vacancies.)**

3. No person shall be a Senator who shall not have attained to the age of thirty years, and been nine years a citizen of the United States, and who shall not, when elected, be an inhabitant of that state for which he shall be chosen.

4. The Vice-President of the United States shall be president of the Senate, but shall have no vote unless they be equally divided.

5. The Senate shall choose their other officers, and also a president pro tempore, in the absence of the Vice-President, or when he shall exercise the office of President of the United States.

6. The Senate shall have the sole power to try all impeachments. When sitting for that purpose, they shall be on oath or affirmation. When the President of the United States is tried, the Chief Justice shall preside; and no person shall be convicted without the concurrence of two-thirds of the members present.

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*Modified in Article 14, Sec. 2, Amendments.

**Provisions changed by Article 17, Amendments.

7. Judgment in cases of impeachment shall not extend further than to removal from office, and disqualification to hold and enjoy any office of honor, trust, or profit under the United States; but the party convicted shall nevertheless be liable and subject to indictment, trial, judgment, and punishment, according to law.

Section Four

Election of Senators and Representatives

1. The times, places, and manner of holding elections for Senators and Representatives shall be prescribed in each state by the legislature thereof, but the Congress may at any time by law make or alter such regulations except as to the places of choosing Senators.

2. (The Congress shall assemble at least once in every year, and such meeting shall be on the first Monday in December, unless they shall by law appoint a different day.)*

Section Five

Powers, Quorum, Journals, Meetings, Adjournments

1. Each House shall be the judge of the elections, returns, and qualifications of its own members, and a majority of each shall constitute a quorum to do business; but a smaller number may adjourn from day to day, and may be authorized to compel the attendance of absent members, in such manner, and under such penalties as each House may provide.

2. Each House may determine the rules of its proceedings, punish its members for disorderly behavior, and, with the concurrence of two-thirds, expel a member.

3. Each House shall keep a journal of its proceedings, and from time to time publish the same, excepting such parts as may in their judgment require secrecy; and the yeas and nays of the members of either House on any question shall, at the desire of one-fifth of those present, be entered on the journal.

4. Neither House, during the session of Congress, shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which the two Houses shall be sitting.

Section Six

Compensation, Privileges, Disabilities

1. The Senators and Representatives shall receive a compensation for their services, to be ascertained by law, and paid out of the Treasury of the United States. They shall in all cases, except treason, felony and breach of the peace, be privileged from arrest during their attendance at the session of their respective Houses, and in going to and returning from the same; and for any speech or debate in either House, they shall not be questioned in any other place.

2. No Senator or Representative shall, during the time for which he was elected, be appointed to any civil office under the authority of the United States, which shall have been created, or the emoluments whereof shall have been increased during such time; and no person holding any office under the United States shall be a member of either House during his continuance in office.

Section Seven

Procedure in Passing Bills, Orders, and Resolutions

1. All bills for raising revenue shall originate in the House of Representatives; but the Senate may propose or concur with amendments as on other bills

2. Every bill which shall have passed the House of Representatives and the Senate, shall, before it become a law, be presented to the President of the United States; if he approve he shall sign it, but if not he shall return it, with his objections, to that House in which it shall have originated, who shall enter the objections at large on their journal, and proceed to reconsider it. If after such reconsideration two-thirds of that House shall agree to pass the bill, it shall be sent, together with the objections, to the other House, by which it shall likewise be reconsidered, and if approved by two-thirds of that House, it shall become a law. But in all such cases the votes of both Houses shall be determined by yeas and nays, and the names of the persons voting for and against the bill shall be entered on the journal of each House respectively. If any bill shall not be returned by the President within ten days (Sundays excepted) after it shall have been presented to him, the same shall be a law, in like manner as if he had signed it, unless the Congress by their adjournment prevent its return, in which case it shall not be a law.

3. Every order, resolution, or vote to which the concurrence of the Senate and House of Representatives may be necessary (except on a question of adjournment) shall be presented to the President of the United States; and before the same shall take effect, shall be approved by him, or being disapproved by him, shall be repassed by two-thirds of the Senate and House of Representatives, according to the rules and limitations prescribed in the case of a bill.

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*Provision changed by Article 20, Sec. 2, Amendments.

Section Eight

Powers of Congress

The Congress shall have power:

1. To lay and collect taxes, duties, imposts and excises, to pay the debts and provide for the common defense and general welfare of the United States; but all duties, imposts and excises shall be uniform throughout the United States;

2. To borrow money on the credit of the United States;

3. To regulate commerce with foreign nations, and among the several States, and with the Indian tribes;

4. To establish an uniform rule of naturalization, and uniform laws on the subject of bankruptcies throughout the United States;

5. To coin money, regulate the value thereof, and of foreign coin, and fix the standard of weights and measures;

6. To provide for the punishment of counterfeiting the securities and current coin of the United States;

7. To establish post offices and post roads;

8. To promote the progress of science and useful arts, by securing for limited time to authors and inventors the exclusive right to their respective writings and discoveries;

9. To constitute tribunals inferior to the Supreme Court;

10. To define and punish piracies and felonies committed on the high seas, and offenses against the law of nations;

11. To declare war, grant letter of marque and reprisal, and make rules concerning captures on land and water;

12. To raise and support armies, but no appropriation of money to that use shall be for a longer term than two years;

13. To provide and maintain a navy;

14. To make rules for the government and regulation of the land and naval forces;

15. To provide for calling forth the militia to execute the laws of the Union, suppress insurrections and repel invasions;

16. To provide for organizing, arming and disciplining the militia, and for governing such part of them as may be employed in the service of the United States, reserving to the states respectively, the appointment of the officers, and the authority of training the militia according to the discipline prescribed by Congress;

17. To exercise exclusive legislation in all cases whatsoever, over such district (not exceeding ten miles square) as may, by session of particular states, and the acceptance of Congress, become the seat of the government of the United States, and to exercise like authority over all places purchased by the consent of the legislature of the state in which the same shall be, for the erection of forts, magazines, arsenals, dock-yards, and other needful buildings; —and

18. To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the Government of the United States, or in any department or officer thereof.

Section Nine

Limitations upon Powers of Congress

1. The migration or importation of such persons as any of the states now existing shall think proper to admit, shall not be prohibited by the Congress prior to the year one thousand eight hundred and eight, but a tax or duty may be imposed on such importation, not exceeding ten dollars for each person.

2. The privilege of the writ of habeas corpus shall not be suspended, unless when in cases of rebellion or invasion the public safety may require it.

3. No bill of attainder or ex post facto law shall be passed.

4. No capitation, or other direct, tax shall be laid, unless in proportion to the census or enumeration herein before directed to be taken.

5. No tax or duty shall be laid on articles exported from any state.

6. No preference shall be given by any regulation of commerce or revenue to the ports of one state over those of another; nor shall vessels bound to, or from, one state, be obliged to enter clear, or pay duties in another.

7. No money shall be drawn from the treasury but in consequence of appropriations made by law; and a regular statement and account of the receipts and expenditures of all public money shall be published from time to time.

8. No title of nobility shall be granted by the United States: And no person holding any office of profit or trust under them, shall, without the consent of the Congress, accept of any present, emolument, office, or title, of any kind whatever from any king, prince, or foreign state.

Section Ten

Restrictions upon Powers of States

1. No state shall enter into any treaty, alliance, or confederation; grant letters of marque and reprisal; coin money; emit bills of credit; make any thing but gold and

silver coin a tender in payment of debts; pass any bill of attainder, ex post facto law, or law impairing the obligation of contracts, or grant any title of nobility.

2. No state shall, without the consent of Congress, lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws; and the net produce of all duties and imposts, laid by any state on imports or exports, shall be for the use of the treasury of the United States; and all such laws shall be subject to the revision and control of the Congress.

3. No state shall, without the consent of Congress, lay any duty of tonnage, keep troops, or ships of war in time of peace, enter into any agreement or compact with another state or with a foreign power, or engage in war, unless actually invaded, or in such imminent danger as will not admit of delay.

ARTICLE II

Section One

Executive Powers, Electors, Qualifications of the President

1. The executive power shall be vested in a President of the United States of America. He shall hold his office during a term of four years, and, together with the Vice-President, chosen for the same term, be elected, as follows:

2. Each state shall appoint, in such manner as the legislature therefore may direct, a number of electors, equal to the whole number of Senators and Representatives to which the state may be entitled in the Congress; but no Senator or Representative, or person holding an office of trust or profit under the United States, shall be appointed an elector.

3. (The Electors shall meet in their respective states, and vote by ballot for two persons, of whom one at least shall not be an inhabitant of the same state with themselves. And they shall make a list of all the persons voted for, and of the number of votes for each; which list they shall sign and certify, and transmit sealed to the seat of the Government of the United States, directed to the President of the Senate. The President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates, and the votes shall then be counted. The person having the greatest number of votes shall be the President, if such number be a majority of the whole number of electors appointed; and if there be more than one who have such majority, and have an equal number of votes, then the House of Representatives shall immediately choose by ballot one of them for President; and if no person have a majority, then from the five highest on the list the said House shall in like manner choose the President. But in choosing the President, the votes shall be taken by states, the representation from each state having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the states, and a majority of all the states shall be necessary to a choice. In every case, after the choice of the President, the person having the greatest number of votes of the electors shall be the Vice-President. But if there should remain two or more who have equal votes, the Senate shall choose from them by ballot the Vice-President.)*

4. The Congress may determine the time of choosing the electors, and the day on which they shall give their votes; which day shall be the same throughout the United States.

5. No person except a natural born citizen, or a citizen of the United States, at the time of the adoption of this Constitution, shall be eligible to the office of President; neither shall any person be eligible to that office who shall not have attained to the age of thirty-five years, and been fourteen years a resident within the United States.

6. In case of the removal of the President from office, or of his death, resignation, or inability to discharge the powers and duties of the said office, the same shall devolve on the Vice-President, and the Congress may by law provide for the case of removal, death, resignation or inability, both of the President and Vice-President, declaring what officer shall then act as President, and such officer shall act accordingly, until the disability be removed, or a President shall be elected.

7. The President shall, at stated times, receive for his services, a compensation, which shall neither be increased nor diminished during the period for which he shall have been elected, and he shall not receive within that period any other emolument from the United States, or any of them.

8. Before he enter the execution of this office, he shall take the following oath or affirmation:

"I do solemnly swear (or affirm) that I will faithfully execute the office of President of the United States, and will to the best of my ability, preserve, protect and defend the Constitution of the United States."

Section Two

Powers and Duties of the President

1. The President shall be Commander in Chief of the army and navy of the United States, and of the militia of the several states, when called into the actual service of the United States; he may require the opinion, in writing, of the principal officer in each of the executive

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*This clause superseded by Article 12, Amendments.

departments, upon any subject relating to the duties of their respective offices, and he shall have power to grant reprieves and pardons for offenses against the United States, except in cases of impeachment.

2. He shall have power, by and with the advice and consent of the Senate, to make treaties, provided two-thirds of the Senators present concur; and he shall nominate, and by and with the advice and consent of the Senate, shall appoint ambassadors, other public ministers and consuls, judges of the Supreme Court, and all other officers of the United States, whose appointments are not herein otherwise provided for, and which shall be established by law; but the Congress may by law vest the appointment of such inferior officers, as they think proper, in the President alone, in the courts of law, or in the heads of departments.

3. The President shall have power to fill up all vacancies that may happen during the recess of the Senate, by granting commissions which shall expire at the end of their next session.

Section Three

Powers and Duties of the President

He shall from time to time give to the Congress information of the state of the Union, and recommend to their consideration such measures as he shall judge necessary and expedient; he may, on extraordinary occasions, convene both Houses, or either of them, and in case of disagreement between them, with respect to the time of adjournment, he may adjourn them to such time as he shall think proper; he shall receive ambassadors and other public ministers; he shall take care that the laws be faithfully executed, and shall commission all the officers of the United States.

Section Four

Forfeiture of Offices for Crimes

The President, Vice-President and all civil officers of the United States, shall be removed from office on impeachment for, and conviction of, treason, bribery, or other crimes and misdemeanors.

ARTICLE III

Section One

Judicial Powers, Tenure of Office

The judicial power of the United States, shall be vested in one Supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish. The judges, both of the Supreme and inferior courts, shall hold their offices during good behavior, and shall, at stated times, receive for their services a compensation, which shall not be diminished during their continuance in office.

Section Two

Cases to Which Judicial Power Extends

1. The judicial power shall extend to all cases, in law and equity, arising under this Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority;—to all cases affecting ambassadors, other public ministers and consuls;—to all cases of admiralty and maritime jurisdiction;—to controversies to which the United States shall be a party;—to controversies between two or more states;—between a state and citizens of another state;—between citizens of different states;—between citizens of the same state claiming lands under grants of different states, and (between a state, or the citizens thereof, and foreign states, citizens or subjects.)*

2. In all cases affecting ambassadors, other public ministers and consuls, and those in which a state shall be party, the Supreme Court shall have original jurisdiction. In all the other cases before mentioned, the Supreme Court shall have appellate jurisdiction, both as to law and fact, with such exceptions, and under such regulations as the Congress shall make.

3. The trial of all crimes, except in cases of impeachment, shall be by jury; and such trial shall be held in the state where said crimes shall have been committed; but when not committed within any state, the trial shall be at such place or places as the Congress may by law have directed.

Section Three

Treason, Proof, and Punishment

1. Treason against the United States, shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or on confession in open court.

2. The Congress shall have power to declare the punishment of treason, but no attainder of treason shall work corruption of blood or forfeiture except during the life of the person attainted.

ARTICLE IV

Section One

Faith and Credit among States

Full faith and credit shall be given in each state to the public acts, records, and judicial proceedings of every other state. And the Congress may by general laws prescribe the manner in which such acts, records and proceedings shall be proved, and the effect thereof.

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*Clause changed by Article II, Amendments.

Section Two
Surrender of Fugitives

1. The citizens of each state shall be entitled to all privileges and immunities of citizens in the several states.

2. A person charged in any state with treason, felony, or other crime, who shall flee from justice, and be found in another state, shall on demand of the executive authority of the state, from which he fled, be delivered up, to be removed to the state having jurisdiction of the crime.

3. No person held to service or labor in one state, under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labor, but shall be delivered up on claim of the party to whom such service of labor may be due.

Section Three
Admission of New States

1. New states may be admitted by the Congress into this Union, but no new state shall be formed or erected within the jurisdiction of any other state; nor any state be formed by the junction of two or more states, or parts of states, without the consent of the legislatures of the states concerned as well as of the Congress.

2. The Congress shall have power to dispose of and make all needful rules and regulation respecting the territory or other property belonging to the United States, and nothing in this Constitution shall be so construed as to prejudice any claims of the United States, or of any particular state.

Section Four
Guarantee of Republican Government

The United States shall guarantee to every state in this Union a republican form of government, and shall protect each of them against invasion; and on application of the legislature, or of the executive (when the legislature cannot be convened) against domestic violence.

ARTICLE V
Amendment of the Constitution

The Congress, whenever two-thirds of both Houses shall deem it necessary, shall propose amendments to this Constitution, or, on the application of the legislatures of two-thirds of the several states, shall call a convention for proposing amendments, which, in either case, shall be valid to all intents and purposes, as part of this Constitution, when ratified by the legislatures of three-fourths of the several states, or by conventions in three-fourths thereof, as the one or the other mode of ratification may be proposed by the Congress; provided that no amendment which may be made prior to the year one thousand eight hundred and eight shall in any manner affect the first and fourth clauses in the ninth section of the first article; and that no state, without its consent, shall be deprived of its equal suffrage in the Senate.

ARTICLE VI
Miscellaneous Provisions

1. All debts contracted and engagements entered into, before the adoption of this Constitution, shall be valid against the United States under this Constitution, as under the confederation.

2. This Constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the Constitution or laws of any state to the contrary notwithstanding.

3. The Senators and Representatives before mentioned, and the members of the several state legislatures, and all executive and judicial officers, both of the United States and of the several states, shall be bound by oath or affirmation, to support this Constitution; but no religious test shall ever be required as a qualification to any office of public trust under the United States.

ARTICLE VII
Ratification and Establishment

The ratification of the conventions of nine states, shall be sufficient for the establishment of this Constitution between the states so ratifying the same.

(This Constitution was adopted on September 17, 1787 by the Constitutional Convention, and was declared ratified on July 2, 1788.)

SIGNERS OF THE CONSTITUTION

CONNECTICUT
William Samuel Johnson
Roger Sherman

DELAWARE
Richard Bassett
Gunning Bedford, Jr.
Jacob Broom
John Dickinson
George Read

Signers of the Constitution *(continued)*

- GEORGIA
  - Abraham Baldwin
  - William Few
- MARYLAND
  - Daniel Carroll
  - Daniel Jenifer
  - James McHenry
- MASSACHUSETTS
  - Nathaniel Gorham
  - Rufus King
- NEW HAMPSHIRE
  - Nicholas Gilman
  - John Langdon
- NEW JERSEY
  - David Brearly
  - Jonathan Dayton
  - William Livingston
  - William Paterson
- NEW YORK
  - Alexander Hamilton
- NORTH CAROLINA
  - William Blount
  - Richard Dodds Spaight
  - Hugh Williamson
- PENNSYLVANIA
  - George Clymer
  - Thomas FitzSimons
  - Benjamin Franklin
  - Jared Ingersoll
  - Thomas Mifflin
  - Gouverneur Morris
  - Robert Morris
  - James Wilson
- RHODE ISLAND
  - None
- SOUTH CAROLINA
  - Pierce Butler
  - Charles Pinckney
  - Charles Cotesworth Pinckney
  - John Rutledge
- VIRGINIA
  - John Blair
  - James Madison
  - George Washington

I-2. AMENDMENTS TO THE CONSTITUTION

Since 1787, twenty-six amendments have been proposed by the Congress and ratified by the several states, pursuant to the fifth Article of the original Constitution.*

ARTICLE I[1]

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

ARTICLE II

A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.

ARTICLE III

No Soldier shall, in time of peace be quartered in any house without the consent of the Owner, nor in time of war, but in a manner to be prescribed by law.

ARTICLE IV

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

ARTICLE V

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

ARTICLE VI

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trail, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

ARTICLE VII

In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trail by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.

ARTICLE VIII

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishment inflicted.

ARTICLE IX

The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

ARTICLE X

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

ARTICLE XI[2]

The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State.

ARTICLE XII[3]

The Electors shall meet in their respective states, and vote by ballot for President and Vice-President, one of whom, at least, shall not be an inhabitant of the same state with themselves; they shall name in their ballots the person voted for as President, and in distinct ballots the person voted for as Vice-President, and they shall make distinct lists of all persons voted for as President, and of all persons voted for as Vice-President, and of the number of votes for each, which lists they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the President of the Senate;—The President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates and the votes shall then be counted;—The person having the greatest number of votes for President, shall be the President, if such number be a majority of the whole number of Electors appointed; and if no person have such majority, then from the persons having the highest numbers not exceeding three on the list of those voted for as President, the House of Representatives shall choose immediately, by ballot, the President. But in choosing the President, the votes shall be taken by states, the representation from each state having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the states, and a majority of all the states shall be necessary to a choice. [And if the House of Representatives shall not choose a President whenever the right of choice shall devolve upon them, before the fourth day of March next following, then the Vice-President shall act as President, as in the case of the death or other constitutional disability of the President.][4] The person having the greatest number of votes as Vice-President, shall be the Vice-President, if such number be a majority of the whole number of Electors appointed, and if no person have a majority, then from the two highest numbers on the list, the Senate shall choose the Vice-President; a quorum for the purpose shall consist of two-thirds of the whole number of Senators, and a majority of the whole number shall be necessary to a choice. But no person constitutionally ineligible to the office of President shall be eligible to that of Vice-President of the United States.

ARTICLE XIII[5]

Section 1. Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

Section 2. Congress shall have power to enforce this article by appropriate legislation.

ARTICLE XIV[6]

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Section 2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

Section 3. No person shall be a Senator or Representative in Congress, or elector of President and Vice-President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

Section 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

Section 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

ARTICLE XV[7]

Section 1. The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude.

Section 2. The Congress shall have power to enforce this article by appropriate legislation.

ARTICLE XVI[8]

The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several States, and without regard to any census or enumeration.

ARTICLE XVII[9]

The Senate of the United States shall be composed of two Senators from each State, elected by the people thereof, for six years; and each Senator shall have one vote. The electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislatures.

When vacancies happen in the representation of any State in the Senate, the executive authority of such State shall issue writs of election to fill such vacancies: *Provided,* That the legislature of any State may empower the executive thereof to make temporary appointments until the people fill the vacancies by election as the legislature may direct.

This amendment shall not be so construed as to affect the election or term of any Senator chosen before it becomes valid as part of the Constitution.

ARTICLE XVIII[10]

[Section 1. After one year from the ratification of this article the manufacture, sale, or transportation of intoxicating liquors within, the importation thereof into, or the exportation thereof from the United States and all territory subject to the jurisdiction thereof for beverage purposes is hereby prohibited.

[Section 2. The Congress and Several States shall have concurrent power to enforce this article by appropriate legislation.

[Section 3. This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by the legislatures of the several States, as provided in the Constitution, within seven years from the date of the submission hereof to the States by the Congress.]

ARTICLE XIX[11]

The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of sex.

Congress shall have power to enforce this article by appropriate legislation.

ARTICLE XX[12]

Section 1. The terms of the President and Vice President shall end at noon on the 20th day of January, and the terms of Senators and Representatives at noon on the 3d day of January, of the years in which such terms would have ended if this article had not been ratified; and the terms of their successors shall then begin.

Section 2. The Congress shall assemble at least once in every year, and such meeting shall begin at noon on the 3d day of January, unless they shall by law appoint a different day.

Section 3. If, at the time fixed for the beginning of the term of the President, the President elect shall have died, the Vice President elect shall become President. If a President shall not have been chosen before the time fixed for the beginning of his term, or if the President elect shall have failed to qualify, then the Vice President elect shall act as President until a President shall have qualified; and the Congress may by law provide for the case wherein neither a President elect nor a Vice President elect shall have qualified, declaring who shall then act as President, or the manner in which one who is to act shall be selected, and such person shall act accordingly until a President or Vice President shall have qualified.

Section 4. The Congress may by law provide for the case of the death of any of the persons from whom the House of Representatives may choose a President whenever the right of choice shall have devolved upon them, and for the case of the death of any of the persons from whom the Senate may choose a Vice President whenever the right of choice shall have devolved upon them.

Section 5. Sections 1 and 2 shall take effect on the 15th day of October following the ratification of this article.

Section 6. This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by the legislatures of three-fourths of the several States within seven years from the date of its submission.

ARTICLE XXI[13]

Section 1. The eighteenth article of amendment to the Constitution of the United States is hereby repealed.

Section 2. The transportation or importation into any State, Territory, or possession of the United States for delivery or use therein of intoxicating liquors, in violation of the laws thereof, is hereby prohibited.

Section 3. This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by conventions in the several States, as provided in the Constitution, within seven years from the date of the submission hereof to the States by the Congress.

ARTICLE XXII[14]

Section 1. No person shall be elected to the office of the President more than twice, and no person who has held the office of President, or acted as President, for more than two years of a term to which some other person was elected President shall be elected to the office of the President more than once. But this Article shall not apply to any person holding the office of President when this Article was proposed by the Congress, and shall not prevent any person who may be holding the office of President, or acting as President, during the term within which this Article becomes operative from holding the office of President or acting as President during the remainder of such term.

Section 2. This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by the legislatures of three-fourths of the several States within seven years from the date of its submission to the States by the Congress.

ARTICLE XXIII[15]

Section 1. The District constituting the seat of Government of the United States shall appoint in such manner as the Congress may direct:

A number of electors of President and Vice President equal to the whole number of Senators and Representatives in Congress to which the District would be entitled if it were a State, but in no event more than the least populous State; they shall be in addition to those appointed by the States, but they shall be considered, for the purposes of the election of President and Vice President, to be electors appointed by a State; and they shall meet in the District and perform such duties as provided by the twelfth article of amendment.

Section 2. The Congress shall have power to enforce this article by appropriate legislation.

ARTICLE XXIV[16]

Section 1. The right of citizens of the United States to vote in any primary or other election for President or Vice President, for electors for President or Vice President, or for Senator or Representative in Congress, shall not be denied or abridged by the United States or any State by reason of failure to pay any poll tax or other tax.

Section 2. The Congress shall have power to enforce this article by appropriate legislation.

ARTICLE XXV[17]

Section 1. In case of removal of the President from office or of his death or resignation, the Vice President shall become President.

Section 2. Whenever there is a vacancy in the office of the Vice President, the President shall nominate a Vice President who shall take office upon confirmation by a majority vote of both Houses of Congress.

Section 3. Whenever the President transmits to the President pro tempore of the Senate and the Speaker of the House of Representatives his written declaration that he is unable to discharge the powers and duties of his office, and until he transmits to them a written declaration to the contrary, such powers and duties shall be discharged by the Vice President as Acting President.

Section 4. Whenever the Vice President and a majority of either the principal officers of the executive departments or of such other body as Congress may by law provide, transmit to the President pro tempore of the Senate and the Speaker of the House of Representatives their written declaration that the President is unable to discharge the powers and duties of his office, the Vice President shall immediately assume the powers and duties of the office as Acting President.

Thereafter, when the President transmits to the President pro tempore of the Senate and the Speaker of the House of Representatives his written declaration that no inability exists, he shall resume the powers and duties of his office unless the Vice President and a majority of either the principal officers of the executive department or of such other body as Congress may by law provide, transmit within four days to the President pro tempore of the Senate and the Speaker of the House of Representatives their written declaration that the President is unable to discharge the powers and duties of his office. Thereupon Congress shall decide the issue, assembling within forty-eight hours for that purpose if not in session. If the Congress, within twenty-one days after receipt of the latter written declaration, or, if Congress is not in session, within twenty-one days after Congress is required to assemble, determines by two-thirds vote of both Houses that the President is unable to discharge the powers and duties of his office, the Vice President shall continue to discharge the same as Acting President; otherwise, the President shall resume the powers and duties of his office.

ARTICLE XXVI[18]

Section 1. The right of citizens of the United States, who are eighteen years of age or older, to vote shall not be denied or abridged by the United States or by any State on account of age.

Section 2. The Congress shall have power to enforce this article by appropriate legislation.

*All the amendments except the Twenty-first Amendment were ratified by the State Legislatures. The Twenty-first Amendment, by its terms, was ratified by "conventions in the several States." Only the Thirteenth, Fourteenth, Fifteenth, and Sixteenth Amendments had numbers assigned to them at the time of ratification.

[1] The first 10 amendments (termed articles), together with 2 others that failed of ratification, were proposed to the several States by resolution of Congress on September 25, 1789. The ratifications were transmitted by the Governors to the President and by him communicated to Congress from time to time. The first 10 amendments were ratified by 11 of the 14 States. Virginia completed the required three-fourths by ratification on December 15, 1791, and its action was communicated to Congress by the President on December 30, 1791. The legislatures of Massachusetts, Georgia and Connecticut ratified them on March 2, 1939, March 18, 1939, and April 19, 1939, respectively.

[2] The Eleventh Amendment was proposed by resolution of Congress on March 4, 1794. It was declared by the President, in a message to Congress dated January 8, 1798, to have been ratified by three-fourths of the several States. Records of the National Archives show that the 11th Amendment was ratified by 13 of the 15 States. It was not ratified by New Jersey or Pennsylvania.

[3] The Twelfth Amendment was proposed in lieu of the original third paragraph of section 1 of article II, by resolution of Congress on December 9, 1803. It was declared in a proclamation of the Secretary of State, dated September 25, 1804, to have been ratified by three-fourths of the States, Records of the National Archives show that it was ratified by 14 of 17 States and rejected by Connecticut, Delaware, and Massachusetts.

[4] The part enclosed by brackets has been superseded by section 3 of Amendment XX.

[5] The Thirteenth Amendment was proposed by resolution of Congress on January 31, 1865. It was declared in a proclamation of the Secretary of State, dated December 18, 1865, to have been ratified by 27 States. Subsequent records of the National Archives show that the 13th Amendment was ratified by 8 additional States. It was rejected by Mississippi.

[6] The Fourteenth Amendment was proposed by resolution of Congress on June 13, 1866. By a concurrent resolution of Congress adopted July 21, 1868, it was declared to have been ratified by "three-fourths and more of the several States of the Union," and the Secretary of State was required duly to promulgate the amendment as a part of the Constitution. He accordingly issued a proclamation, dated July 28, 1868, declaring the amendment to have been ratified by 28 States, "being more than three-fourths." Records of the National Archives show that the 14th Amendment was subsequently ratified by 9 additional States.

[7] The Fifteenth Amendment was proposed by resolution of Congress on February 26, 1869. It was declared in a proclamation of the Secretary of State, dated March 30, 1870, to have been ratified by 29 States, which "constitute three-fourths." Records of the National Archives show that the 15th Amendment was subsequently ratified by 6 more of the States. It was rejected by Tennessee.

[8] The Sixteenth Amendment was proposed by resolution of Congress on July 12, 1909. It was declared in a proclamation of the Secretary of State, dated February 25, 1913, to have been ratified by 36 States, which "constitute three-fourths." Subsequent records of the National Archives show that the 16th Amendment was ratified by 2 additional States. It was rejected by Connecticut, Rhode Island, and Utah.

[9] The Seventeenth Amendment was proposed by resolution of Congress on May 13, 1912. It was declared in a proclamation of the Secretary of State, dated May 31, 1913, to have been ratified by 36 States, which "constitute three-fourths." Records of the National Archives show that the 17th Amendment was subsequently ratified by 1 additional State. It was rejected by Utah.

[10] The Eighteenth Amendment was proposed by resolution of Congress on December 18, 1917. It was declared in a proclamation of the Acting Secretary of State, dated January 29, 1919, to have been ratified by 36 States, which "constitute three-fourths." Subsequent records of the National Archives show that the 18th Amendment was ratified by 9 additional States. It was rejected by Rhode Island. By its own terms the 18th Amendment became effective one year after its ratification, which was consummated on January 16, 1919, and therefore went into effect on January 16, 1920.

Repeal of the 18th Amendment on December 5, 1933, was proclaimed by the President in his proclamation of that date, when the ratification of the 21st Amendment was certified by the Acting Secretary of State.

[11] The Nineteenth Amendment was proposed by resolution of Congress on June 4, 1919. It was declared in a proclamation of the Secretary of State, dated August 26, 1920, to have been ratified by 36 States, which "constitutes three-fourths." Subsequent records of the National Archives show that the 19th Amendment was ratified by 12 additional States.

[12] The Twentieth Amendment was proposed by resolution of Congress on March 2, 1932. It was declared in a proclamation of the Secretary of State, dated February 6, 1933, to have been ratified by 39 States, which "constitute more than the requisite three-fourths." Subsequent records of the National Archives show that the 20th Amendment was ratified by all 48 States before sections 1 and 2 became effective on October 15, 1933. The other sections of the amendment became effective on January 23, 1933, when its ratification was consummated by three-fourths of the States.

[13] The Twenty-first Amendment was proposed by resolution of Congress on February 20, 1933. It was certified in a proclamation of the Acting Secretary of State dated December 5, 1933, to have been ratified by conventions of 36 States, which "constitute the requisite three-fourths of the whole number of States." Subsequent records of the National Archives show that the 21st Amendment was ratified by 2 additional States. It was rejected by the convention of South Carolina. North Carolina voted against holding a convention.

[14] The Twenty-second Amendment was proposed by resolution of Congress on March 21, 1947. Ratification was completed on February 27, 1951, when the thirty-sixth State (Minnesota) approved the amendment. On March 1, 1951, the Administrator of General Services certified that "the States whose Legislatures have so ratified the said proposed Amendment constitute the requisite three-fourths of the whole number of States in the United States." Records of the National Archives show that the 22nd Amendment was subsequently ratified by 5 additional States. It was rejected by Oklahoma and Massachusetts.

[15] The Twenty-third Amendment was proposed by resolution of Congress on June 17, 1960. The Administrator of General Services certified the ratification and adoption of the amendment by three-fourths of the States on April 3, 1961. It was rejected by Arkansas.

[16] The Twenty-fourth Amendment was proposed by resolution of Congress on August 27, 1962. It was declared in a Proclamation of the Adminstrator of General Services dated February 4, 1964, to have been ratified by three-fourths of the States. It was rejected by the legislature of Mississippi on December 20, 1962.

[17] The Twenty-fifth Amendment to the Constitution was proposed by the Congress on July 6, 1965. It was declared in a certificate of the Administrator of General Services, dated February 23, 1967, to have been ratified by the legislatures of 38 of the 50 States.

Ratification was completed on February 10, 1967.

The amendment was subsequently ratified by Connecticut, Montana, South Dakota, Ohio, Alabama, North Carolina, Illinois, Texas, and Florida.

[18] The Twenty-sixth Amendment was proposed by resolution of Congress on March 23, 1971. It was declared in a certificate of the Administrator of General Services, dated July 5, 1971, to have been ratified by the legislatures of 39 of the 50 States.

Ratification was completed on July 1, 1971.

The amendment was subsequently ratified by Virginia, Wyoming, and Georgia.

I-3. AMENDMENTS PROPOSED BUT NOT RATIFIED

Since 1789, in addition to the twenty-six amendments which have been ratified by the required three-fourths of the States, six other amendments have been submitted to the States but have not been ratified by them. The text of these amendments follows.

In 1789, at the time of the submission of the Bill of Rights, twelve proposed amendments were submitted to the States. Of these, articles III-XII were ratified and became the first ten amendments to the Constitution. Proposed articles I and II were not ratified.

ARTICLE I

After the first enumeration required by the first article of the Constitution, there shall be one Representative for every thirty thousand, until the number shall amount to one hundred, after which the proportion shall be so regulated by Congress, that there shall be not less than one hundred Representatives, nor less than one Representative for every forty thousand persons, until the number of Representatives shall amount to two hundred; after which the proportion shall be so regulated by Congress, that there shall not be less than two hundred Representatives, nor more than one Representative for every fifty thousand persons.

ARTICLE II

No law varying the compensation for the services of the Senators and Representatives shall take effect, until an election of Representatives shall have intervened.

Thereafter, in the 2d session of the 11th Congress, the Congress proposed the following amendment to the Constitution relating to acceptance by citizens of the United States of titles of nobility from any foreign government.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled (two-thirds of both Houses concurring), That the following section be submitted to the legislatures of the several states, which, when ratified by the legislatures of three-fourths of the states, shall be valid and binding, as a part of the Constitution of the United States.

If any citizen of the United States shall accept, claim, receive, or retain any title of nobility or honour, or shall, without the consent of Congress, accept and retain any present, pension, office, or emolument of any kind whatever, from any emperor, king, prince, or foreign power, such person shall cease to be a citizen of the United States, and shall be incapable of holding any office of trust or profit under them, or either of them.

During the second session of the 36th Congress on March 2, 1861, the following proposed amendment to the Constitution protecting slavery was signed by President Buchanan. It is interesting to note in this connection that this is the only proposed amendment to the Constitution ever signed by the President. The President's signature is considered unnecessary because of the constitutional provision that upon the concurrence of two-thirds of both Houses of Congress the proposal shall be submitted to the States and shall be ratified by three-fourths of the States.

ARTICLE XIII

No amendment shall be made to the Constitution which will authorize or give to Congress the power to abolish or interfere, within any State, with the domestic institutions thereof, including that of persons held to labor or service by the laws of said State.

In the twentieth century, two proposed amendments were not ratified by three-fourths of the States: the child-labor amendment and the equal rights amendment.

The proposed child-labor amendment, which was submitted to the States during the 1st session of the 68th Congress in June 1924, was ratified by 28 states.

ARTICLE

Section 1. The Congress shall have power to limit, regulate, and prohibit the labor of persons under 18 years of age.

Section 2. The power of the several States is unimpaired by this article except that the operation of State laws shall be suspended to the extent necessary to give effect to legislation enacted by the Congress.

The amendment relative to equal rights for men and women was proposed by the 92d Congress. It passed the House on October 12, 1971, and the Senate on March 22, 1972.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled (two-thirds of each House concurring therein), That the following article is proposed as an amendment to the Constitution of the United States, which shall be valid to all intents and purposes as part of the Constitution when ratified by the legislatures of three-fourths of the several States within seven years from the date of its submission by the Congress:

ARTICLE

Section 1. Equality of rights under the law shall not be denied or abridged by the United States or by any State on account of sex.

Section 2. The Congress shall have the power to enforce, by appropriate legislation, the provisions of this article.

Section 3. This amendment shall take effect two years after the date of ratification.

The deadline for the ratification of the equal rights amendment was extended by House Joint Resolution 638, 95th Congress, 2d session. The extension passed the House on August 15, 1978, and the Senate on October 6, 1978, and was approved by the President on October 20, 1978.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That notwithstanding any provision of House Joint Resolution 208 of the Ninety-second Congress, second session, to the contrary, the article of amendment proposed to the States in such joint resolution shall be valid to all intents and purposes as part of the Constitution when ratified by the legislatures of three-fourths of the several States not later than June 30, 1982.

As of the final date, the amendment was ratified by only 35 states and was therefore not adopted.

The amendment to provide for representation of the District of Columbia in the Congress was proposed by the 95th Congress. It passed the House on March 2, 1978, and the Senate on August 22, 1978. It is still pending.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled (two-thirds of each House concurring therein), That the following article is proposed as an amendment to the Constitution of the United States, which shall be valid to all intents and purposes as part of the Constitution when ratified by the legislatures of three-fourths of the several States within seven years from the date of its submission by the Congress:

ARTICLE

Section 1. For purposes of representation in the Congress, election of the President and Vice President, and article V of this Constitution, the District constituting the seat of government of the United States shall be treated as though it were a State.

Section 2. The exercise of the rights and powers conferred under this article shall be by the people of the District constituting the seat of government, and as shall be provided by the Congress.

Section 3. The twenty-third article of amendment to the Constitution of the United States is hereby repealed.

Section 4. This article shall be inoperative, unless it shall have been ratified as an amendment to the Constitution by the legislatures of three-fourths of the several States within seven years from the date of its submission.

As of June 30, 1984, 16 states have ratified this amendment.

Beginning with the proposed 18th amendment, Congress has customarily included a provision requiring ratification within 7 years from the time of the submission to the States. The Supreme Court in *Coleman* v. *Miller,* 307 U.S. 433 (1939), declared that the question of the reasonableness of the time within which a sufficient number of states must act is a political question to be determined by the Congress.

I-4. SELECTED *FEDERALIST* PAPERS

The Federalist is a collection of eighty-five papers or letters to the public under the penname of Publius. The main theme of these essays is support for the newly written Constitution of the United States. The authors endeavored to refute arguments against ratification of the Constitution. In so doing, they created classic commentaries on the principles of a free and popular government.

The Federalist papers were printed originally in the newspapers of New York City. The first one was published on October 27, 1787; the series was concluded in May, 1788.

Authors of *The Federalist* are Alexander Hamilton, James Madison, and John Jay. However, Hamilton wrote most of them, Madison wrote several of the papers, and Jay wrote only five of them. Following are seven of the best papers: Numbers 1, 70, and 78 by Hamilton; Numbers 10, 39, and 51 by Madison, and Number 2 by Jay.

NUMBER 1 by Alexander Hamilton

After an unequivocal experience of the inefficacy of the subsisting federal government, you are called upon to deliberate on a new Constitution for the United States of America. The subject speaks its own importance; comprehending in its consequences nothing less than the existence of the UNION, the safety and welfare of the parts of which it is composed, the fate of an empire in many respects the most interesting in the world. It has been frequently remarked that it seems to have been reserved to the people of this country, by their conduct and example, to decide the important question, whether societies of men are really capable or not of establishing good government from reflection and choice, or whether they are forever destined to depend for their political constitutions on accident and force. If there be any truth in the remark, the crisis at which we are arrived may with propriety be regarded as the era in which that decision is to be made; and a wrong election of the part we shall act may, in this view, deserve to be considered as the general misfortune of mankind.

This idea will add the inducements of philanthropy to those of patriotism, to heighten the solicitude which all considerate and good men must feel for the event. Happy will it be if our choice should be directed by a judicious estimate of our true interests, unperplexed and unbiased by considerations not connected with the public good. But this is a thing more ardently to be wished than seriously to be expected. The plan offered to our deliberations affects too many particular interests, innovates upon too many local institutions, not to involve in its discussion a variety of objects foreign to its merits, and of views, passions, and prejudices little favorable to the discovery of truth.

Among the most formidable of the obstacles which the new Constitution will have to encounter may readily be distinguished the obvious interest of a certain class of men in every State to resist all changes which may hazard a diminution of the power, emolument, and consequence of the offices they hold under the State establishments; and the perverted ambition of another class of men, who will either hope to aggrandize themselves by the confusions of their country, or will flatter themselves with fairer prospects of elevation from the subdivision of the empire into several partial confederacies than from its union under one government.

It is not, however, my design to dwell upon observations of this nature. I am well aware that it would be disingenuous to resolve indiscriminately the opposition of any set of men (merely because their situations might subject them to suspicion) into interested or ambitious views. Candor will oblige us to admit that even such men may be actuated by upright intentions; and it cannot be doubted that much of the opposition which has made its appearance, or may hereafter make its appearance, will spring from sources, blameless at least if not respectable—the honest errors of minds led astray by preconceived jealousies and fears. So numerous indeed and so powerful are the causes which serve to give a false bias to the judgment, that we, upon many occasions, see wise and good men on the wrong as well as on the right side of questions of the first magnitude to society. This circumstance, if duly attended to, would furnish a lesson of moderation to those who are ever so thoroughly persuaded of their being in the right in any controversy. And a further reason for caution, in this respect, might be drawn from the reflection that we are not always sure that those who advocate the truth are influenced by purer principles than their antagonists. Ambition, avarice, personal animosity, party opposition, and many other motives not more laudable than these, are apt to operate as well upon those who support as those who oppose the right side of a question. Were there not even these inducements to moderation, nothing could be more ill-judged than that intolerant spirit which has at all times characterized political parties. For in politics, as in religion, it is equally absurd to aim at making proselytes by fire and sword. Heresies in either can rarely be cured by persecution.

And yet, however just these sentiments will be allowed to be, we have already sufficient indications that it will happen in this as in all former cases of great national discussion. A torrent of angry and malignant passions will be set loose. To judge from the conduct of the opposite parties, we shall be led to conclude that they will mutually hope to evince the justness of their opinions, and to increase the number of their converts by the loudness of their declamations and by the bitterness of their invectives. An enlightened zeal for the energy and efficiency of government will be stigmatized as the offspring of a temper fond of despotic power and hostile to the principles of liberty. An over-scrupulous jealousy of danger to the rights of the people, which is more commonly the fault of the head than of the heart, will be represented as mere pretense and artifice, the stale bait for popularity at the expense of public good. It will be forgotten, on the one hand, that jealousy is the ususal concomitant of violent love, and that the noble enthusiasm of liberty is too apt to be infected with a spirit of narrow and illiberal distrust. On the other hand, it will be equally forgotten that the vigor of government is essential to the security of liberty; that, in the contemplation of a sound and well-informed judgment, their interests can never be separated; and that a dangerous ambition more often lurks behind the specious mask of zeal for the rights of the people than under the forbidding appearance of zeal for the firmness and efficiency of government. History will teach us that the former has been found a much more certain road to the introduction of despotism than the latter, and that of those men who have overturned the liberties of republics, the greatest number have begun their career by paying an obsequious court to the people, commencing demagogues and ending tyrants.

In the course of the preceding observations, I have had an eye, my fellow-citizens, to putting you upon your guard against all attempts, from whatever quarter, to influence your decision in a matter of the utmost moment to your welfare by any impressions other than those which may result from the evidence of truth. You will, no doubt, at the same time have collected from the general scope of them that they proceed from a source not unfriendly to the new Constitution. Yes, my countrymen, I own to you that after having given it an attentive consideration, I am clearly of opinion it is your interest to adopt it. I am convinced that this is the safest course for your liberty, your dignity, and your happiness. I affect not reserves which I do not feel. I will not amuse you with an appearance of deliberation when I have decided. I frankly acknowledge to you my reasons on which they are founded. The consciousness of good intentions disdains ambiguity. I shall not, however, multiply professions on this head. My motives must remain in the depository of my own breast. My arguments will be open to all and may be judged of by all. They shall at least be offered in a spirit which will not disgrace the cause of truth.

I propose, in a series of papers, to discuss the following interesting particulars:—*The utility of the UNION to your political prosperity—The insufficiency of the present Confederation to preserve that Union—The necessity of a government at least equally energetic with the one proposed, to the attainment of this object—The conformity of the proposed Constitution to the true principles of republican government—Its analogy to your own State Constitution*—and lastly, *The additional security which its adoption will afford to the preservation of that species of government, to liberty, and to property.*

In the progress of this discussion I shall endeavor to give a satisfactory answer to all the objections which shall have made their appearance, that may seem to have any claim to your attention.

It may perhaps be thought superfluous to offer arguments to prove the utility of the UNION, a point, no doubt, deeply engraved on the hearts of the great body of the people in every State, and one which it may be imagined, has no adversaries. But the fact is that we already hear it whispered in the private circles of those who oppose the new Constitution, that the thirteen States are of too great extent for any general system, and that we must of necessity resort to separate confederacies of distinct portions of the whole. This doctrine will, in all probability, be gradually propagated, till it has votaries enough to countenance an open avowal of it. For nothing can be more evident to those who are able to take an enlarged view of the subject than the alternative of an adoption of the new Constitution or a dismemberment of the Union. It will therefore be of use to begin by examining the advantages of that Union, the certain evils, and the probable dangers, to which every State will be exposed from its dissolution. This shall accordingly constitute the subject of my next address.

PUBLIUS

NUMBER 2 by John Jay

When the people of America reflect that they are now called upon to decide a question, which in its consequences must prove one of the most important that ever engaged their attention, the propriety of their taking a very comprehensive, as well as a very serious, view of it will be evident.

Nothing is more certain than the indispensable necessity of government; and it is equally undeniable that whenever and however it is instituted, the people must cede to it some of their natural rights, in order to vest it with requisite powers. It is well worthy of consideration, therefore, whether it would conduce more to the interest of the people of America that they should, to all general purposes, be one nation, under one federal government, than that they should divide themselves into separate confederacies and give to the head of each the same kind of powers which they are advised to place in one national government.

It has until lately been a received and uncontradicted opinion that the prosperity of the people of America depended on their continuing firmly united, and the wishes, prayers, and efforts of our best and wisest citizens have been constantly directed to that object. But politicians now appear who insist that this opinion is erroneous, and that instead of looking for safety and happiness in union, we ought to seek it in a division of the States into distinct confederacies or sovereignties. However extraordinary this new doctrine may appear, it nevertheless has its advocates; and certain characters who were much opposed to it formerly are at present of the number. Whatever may be the arguments of inducements which have wrought this change in the sentiments and declarations of these gentlemen, it certainly would not be wise in the people at large to adopt these new political tenets without being fully convinced that they are founded in truth and sound policy.

It has often given me pleasure to observe that independent America was not composed of detached and distant territories, but that one connected, fertile, wide-spreading country was the portion of our western sons of liberty. Providence has in a particular manner blessed it with a variety of soils and productions and watered it with innumerable streams for the delight and accommodation of its inhabitants. A succession of navigable waters forms a kind of chain round its borders, as if to bind it together; while the most noble rivers in the world, running at convenient distances, present them with highways for the easy communication of friendly aids and the mutual transportation and exchange of their various commodities.

With equal pleasure I have as often taken notice that Providence has been pleased to give this one connected country to one united people—a people descended from the same ancestors, speaking the same language, professing the same religion, attached to the same principles of government, very similar in their manners and customs, and who, by their joint counsels, arms, and efforts, fighting side by side throughout a long and bloody war, have nobly established their general liberty and independence.

This country and this people seem to have been made for each other, and it appears as if it was the design of Providence that an inheritance so proper and convenient for a band of brethren, united to each other by the strongest ties, should never be split into a number of unsocial, jealous, and alien sovereignties.

Similar sentiments have hitherto prevailed among all orders and denominations of men among us. To all general purposes we have uniformly been one people; each individual citizen everywhere enjoying the same national rights, privileges, and protection. As a nation we have made peace and war; as a nation we have vanquished our common enemies; as a nation we have formed alliances, and made treaties, and entered into various compacts and conventions with foreign states.

A strong sense of the value and blessings of union induced the people, at a very early period, to institute a federal government to preserve and perpetuate it. They formed it almost as soon as they had a political existence; nay, at a time when their habitations were in flames, when many of their citizens were bleeding, and when the progress of hostility and desolation left little room for those calm and mature inquiries and reflections which must ever precede the formation of a wise and well-balanced government for a free people. It is not to be wondered at that a government instituted in times so inauspicious should on experiment be found greatly deficient and inadequate to the purpose it was intended to answer.

This intelligent people perceived and regretted these defects. Still continuing no less attached to union than enamored of liberty, they observed the danger which immediately threatened the former and more remotely the latter; and being persuaded that ample security for both could only be found in a national government more wisely framed, they, as with one voice, convened the late convention at Philadelphia to take that important subject under consideration.

This convention, composed of men who possessed the confidence of the people, and many of whom had become highly distinguished by their patriotism, virtue, and wisdom, in times which tried the minds and hearts of men, undertook the arduous task. In the mild season of peace, with minds unoccupied by other subjects, they passed many months in cool, uninterrupted, and daily consultation; and finally, without having been awed by power, or influenced by any passions except love for their country, they presented and recommended to the people the plan produced by their joint and very unanimous councils.

Admit, for so is the fact, that this plan is only *recommended;* not imposed, yet let it be remembered that it is neither recommended to *blind* approbation, nor to *blind* reprobation; but to that sedate and candid consideration which the magnitude and importance of the subject demand, and which it certainly ought to receive. But, as has been already remarked, it is more to be wished than expected that it may be so considered and examined. Experience on a former occasion teaches us not to be too sanguine in such hopes. It is not yet forgotten that well-grounded apprehensions of imminent danger induced the people of America to form the memorable Congress of

1774. That body recommended certain measures to their constituents, and the event proved their wisdom; yet it is fresh in our memories how soon the press began to teem with pamphlets and weekly papers against those very measures. Not only many of the officers of government, who obeyed the dictates of personal interest, but others, from a mistaken estimate of consequences, from the undue influence of ancient attachments or whose ambition aimed at objects which did not correspond with the public good, were indefatigable in their endeavors to persuade the people to reject the advice of that patriotic Congress. Many, indeed, were deceived and deluded, but the great majority of the people reasoned and decided judiciously; and happy they are in reflecting that they did so.

They considered that the Congress was composed of many wise and experienced men. That, being convened from different parts of the country, they brought with them and communicated to each other a variety of useful information. That, in the course of the time they passed together in inquiring into and discussing the true interests of their country, they must have acquired very accurate knowledge on that head. That they were individually interested in the public liberty and prosperity, and therefore that it was not less their inclination than their duty to recommend only such measures as, after the most mature deliberation, they really thought prudent and advisable.

These and similar considerations then induced the people to rely greatly on the judgment and integrity of the Congress; and they took their advice, notwithstanding the various arts and endeavors used to deter and dissuade them from it. But if the people at large had reason to confide in the men of that Congress, few of whom had been tried or generally known, still greater reason have they now to respect the judgment and advice of the convention, for it is well known that some of the most distinguished members of that Congress, who have been since tried and justly approved for patriotism and abilities, and who have grown old in acquiring political information, were also members of this convention, and carried into it their accumulated knowledge and experience.

It is worthy of remark that not only the first, but every succeeding Congress, as well as the late convention, have invariably joined with the people in thinking that the prosperity of America depended on its Union. To preserve and perpetuate it was the great object of the people in forming that convention, and it is also the great object of the plan which the convention has advised them to adopt. With what propriety, therefore, or for what good purposes, are attempts at this particular period made by some men to depreciate the importance of the Union? Or why is it suggested that three or four confederacies would be better than one? I am persuaded in my own mind that the people have always thought right on this subject, and that their universal and uniform attachment to the cause of the Union rests on great and weighty reasons, which I shall endeavor to develop and explain in some ensuing papers. They who promote the idea of substituting a number of distinct confederacies in the room of the plan of the convention seem clearly to foresee that the rejection of it would put the continuance of the Union in the utmost jeopardy. That certainly would be the case, and I sincerely wish that it may be as clearly foreseen by every good citizen that whenever the dissolution of the Union arrives, America will have reason to exclaim, in the words of the poet: "FAREWELL! A LONG FAREWELL TO ALL MY GREATNESS."

PUBLIUS

NUMBER 10 by James Madison

Among the numerous advantages promised by a well-constructed Union, none deserves to be more accurately developed than its tendency to break and control the violence of faction. The friend of popular governments never finds himself so much alarmed for their character and fate as when he contemplates their propensity to this dangerous vice. He will not fail, therefore, to set a due value on any plan which, without violating the principles to which he is attached, provides a proper cure for it. The instability, injustice, and confusion introduced into the public councils have, in truth, been the mortal diseases under which popular governments have everywhere perished, as they continue to be the favorite and fruitful topics from which the adversaries to liberty derive their most specious declamations. The valuable improvements made by the American constitutions on the popular models, both ancient and modern, cannot certainly be too much admired; but it would be an unwarrantable partiality to contend that they have as effectually obviated the danger on this side, as was wished and expected. Complaints are everywhere heard from our most considerate and virtuous citizens, equally the friends of public and private faith and of public and personal liberty, that our governments are too unstable, that the public good is disregarded in the conflicts of rival parties, and that measures are too often decided, not according to the rules of justice and the rights of the minor party, but by the superior force of an interested and overbearing majority. However anxiously we may wish that these complaints had no foundation, the evidence of known facts will not permit us to deny that thay are in some degree true. It will be found, indeed, on a candid review of our situation, that some of the distresses under which we labor have been erroneously charged on the operation of our governments; but it will be found, at the same time, that other causes will not alone account for many of our heaviest misfortunes; and, particularly, for that prevailing and increasing distrust of public engagements and alarm for private rights which are echoed from one end of the continent to the other. These must be chiefly, if not wholly, effects of the unsteadiness and injustice with which a factious spirit has tainted our public administration.

By a faction I understand a number of citizens, whether amounting to a majority or minority of the whole, who are united and actuated by some common impulse of passion, or of interest, adverse to the rights of other citizens, or to the permanent and aggregate interests of the community.

There are two methods of curing the mischiefs of faction: the one, by removing its causes; the other, by controlling its effects.

There are again two methods of removing the causes of faction: the one, by destroying the liberty which is essential to its existence; the other, by giving to every citizen the same opinions, the same passions, and the same interests.

It could never be more truly said than of the first remedy that it was worse than the disease. Liberty is to faction what air is to fire, an aliment without which it instantly expires. But it could not be a less folly to abolish liberty, which is essential to political life, because it nourishes faction than it would be to wish the annihilation of air, which is essential to animal life, because it imparts to fire its destructive agency.

The second expedient is as impracticable as the first would be unwise. As long as the reason of man continues fallible, and he is at liberty to exercise it, different opinions will be formed. As long as the connection subsists between his reason and his self-love, his opinions and his passions will have a reciprocal influence on each other; and the former will be objects to which the latter will attach themselves. The diversity in the faculties of men, from which the rights of property originate, is not less an insuperable obstacle to a uniformity of interests. The protection of these faculties is the first object of government. From the protection of different and unequal faculties of acquiring property, the possession of different degrees and kinds of property immediately results; and from the influence of these on the sentiments and views of the respective proprietors ensues a division of the society into different interests and parties.

The latent causes of faction are thus sown in the nature of man; and we see them everywhere brought into different degrees of activity, according to the different circumstances of civil society. A zeal for different opinions concerning religion, concerning government, and many other points, as well of speculation as of practice; an attachment to different leaders ambitiously contending for pre-eminence and power; or to persons of other descriptions whose fortunes have been interesting to the human passions, have, in turn, divided mankind into parties, inflamed them with mutual animosity, and rendered them much more disposed to vex and oppress each other than to co-operate for their common good. So strong is this propensity of mankind to fall into mutual animosities that where no substantial occasion presents itself the most frivolous and fanciful distinctions have been sufficient to kindle their unfriendly passions and excite their most violent conflicts. But the most common and durable source of factions has been the verious and unequal distribution of property. Those who hold and those who are without property have ever formed distinct interests in society. Those who are creditors, and those who are debtors, fall under a like discrimination. A landed interest, a manufacturing interest, a mercantile interest, a moneyed interest, with many lesser interests, grow up of necessity in civilized nations, and divide them into different classes, actuated by different sentiments and views. The regulation of these various and interfering interests forms the principal task of modern legislation and involves the spirit of party and faction in the necessary and ordinary operations of government.

No man is allowed to be a judge in his own cause, because his interest would certainly bias his judgment, and, not improbably, corrupt his integrity. With equal, nay with greater reason, a body of men are unfit to be both judges and parties at the same time; yet what are many of the most important acts of legislation but so many judicial determinations, not indeed concerning the rights of single persons, but concerning the rights of large bodies of citizens? And what are the different classes of legislators but advocates and parties to the causes which they determine? Is a law proposed concerning private debts? It is a question to which the creditors are parties on one side and the debtors on the other. Justice ought to hold the balance between them. Yet the parties are, and must be, themselves the judges; and the most numerous party, or in other words, the most powerful faction must be expected to prevail. Shall domestic manufacturers be encouraged, and in what degree, by restrictions on foreign manufacturers? are questions which would be differently decided by the landed and the manufacturing classes, and probably by neither with a sole regard to justice and the public good. The apportionment of taxes on the various descriptions of property is an act which seems to require the most exact impartiality; yet there is, perhaps, no legislative act in which greater opportunity and temptation are given to a predominant party to trample on the rules of justice. Every shilling with which they overburden the inferior number is a shilling saved to their own pockets.

It is in vain to say that enlightened statesmen will be able to adjust these clashing interests and render them all subservient to the public good. Enlightened statesmen will not always be at the helm. Nor, in many cases, can such an adjustment be made at all without taking into view indirect and remote considerations, which will rarely prevail over the immediate interest which one party may find in disregarding the rights of another or the good of the whole.

The inference to which we are brought is that the *causes* of faction cannot be removed and that relief is only to be sought in the means of controlling its *effects*.

If a faction consists of less than a majority, relief is supplied by the republican principle, which enables the majority to defeat its sinister views by regular vote. It may clog the administration, it may convulse the society; but it will be unable to execute and mask its violence under the forms of the Constitution. When a majority is included in a faction, the form of popular government, on the other hand, enables it to sacrifice to its ruling passion or interest both the public good and the rights of other citizens. To secure the public good and private rights against the danger of such a faction, and at the same time to preserve the spirit and the form of popular government, is then the great object to which our inquiries are directed. Let me add that it is the great desideratum by which alone this form of government can be rescued from the opprobrium under which it has so long labored and be recommended to the esteem and adoption of mankind.

By what means is this object attainable? Evidently by one of two only. Either the existence of the same passion or interest in a majority at the same time must be prevented, or the majority, having such coexistent passion or interest, must be rendered, by their number and local situation, unable to concert and carry into effect schemes of oppression. If the impulse and the opportunity be suffered to coincide, we well know that neither moral nor religious motives can be relied on as an adequate control. They are not found to be such on the injustice and violence of individuals, and lose their efficacy in proportion to the number combined together, that is, in proportion as their efficacy becomes needful.

From this view of the subject it may be concluded that a pure democracy, by which I mean a society consisting of a small number of citizens, who assemble and administer the government in person, can admit of no cure for the mischiefs of faction. A common passion or interest will, in almost every case, be felt by a majority of the whole; a communication and concert results from the form of government itself; and there is nothing to check the inducements to sacrifice the weaker party or an obnoxious individual. Hence it is that such democracies have ever been spectacles of turbulence and contention; have ever been found incompatible with personal security or the rights of property; and have in general been as short in their lives as they have been violent in their deaths. Theoretic politicians, who have patronized this species of government, have erroneously supposed that by reducing mankind to a perfect equality in their political rights, they would at the same time be perfectly equalized and assimilated in their possessions, their opinions, and their passions.

A republic, by which I mean a government in which the scheme of representation takes place, opens a different prospect and promises the cure for which we are seeking. Let us examine the points in which it varies from pure democracy, and we shall comprehend both the nature of the cure and the efficacy which it must derive from the Union.

The two great points of difference between a democracy and a republic are: first, the delegation of the government, in the latter, to a small number of citizens elected by the rest; secondly, the greater number of citizens and greater sphere of country over which the latter may be extended.

The effect of the first difference is, on the one hand, to refine and enlarge the public views by passing them through the medium of a chosen body of citizens, whose wisdom may best discern the true interest of their country and whose patriotism and love of justice will be least likely to sacrifice it to temporary or partial considerations. Under such a regulation it may well happen that the public voice, pronounced by the representatives of the people, will be more consonant to the public good than if pronounced by the people themselves, convened for the purpose. On the other hand, the effect may be inverted. Men of factious tempers, of local prejudices, or of sinister designs, may, by intrigue, by corruption, or by other means, first obtain the suffrages, and then betray the interests of the people. The question resulting is, whether small or extensive republics are most favorable to the election of proper guardians of the public weal; and it is clearly decided in favor of the latter by two obvious considerations.

In the first place it is to be remarked that however small the republic may be the representatives must be raised to a certain number in order to guard against the cabals of a few; and that however large it may be they must be limited to a certain number in order to guard against the confusion of a multitude. Hence, the number of representatives in the two cases not being in proportion to that of the constituents, and being proportionally greatest in the small republic, it follows that if the proportion of fit characters be not less in the large than in the small republic, the former will present a greater option, and consequently a greater probability of a fit choice.

In the next place, as each representative will be chosen by a greater number of citizens in the large than in the small republic, it will be more difficult for unworthy candidates to practise with success the vicious arts by which elections are too often carried; and the suffrages of the people being more free, will be more likely to center on men who possess the most attractive merit and the most diffusive and established characters.

It must be confessed that in this, as in most other cases, there is a mean, on both sides of which inconveniencies will be found to lie. By enlarging too much the number of electors, you render the representative too little acquainted with all their local circumstances and lesser interests; as by reducing it too much, you render him unduly attached to these, and too little fit to comprehend and pursue great and national objects. The federal Constitution forms a happy combination in this respect; the great and aggregate interests being referred to the national, the local and particular to the State legislatures.

The other point of difference is the great number of citizens and extent of territory which may be brought within the compass of republican than of democratic government; and it is this circumstance principally which renders factious combinations less to be dreaded in the former than in the latter. The smaller the society, the fewer probably will be the distinct parties and interests composing it; the fewer the distinct parties and interests, the more frequently will a majority be found of the same party; and the smaller the number of individuals composing a majority, and the smaller the compass within which they are placed, the more easily will they concert and execute their plans of oppression. Extend the sphere and you take in a greater variety of parties and interests; you make it less probable that a majority of the whole will have a common motive to invade the rights of other citizens; or if such a common motive exists, it will be more difficult for all who feel it to discover their own strength and to act in unison with each other. Besides other impediments, it may be remarked that, where there is a consciousness of unjust or dishonorable purposes, communication is always checked by distrust in proportion to the number whose concurrence is necessary.

Hence, it clearly appears that the same advantage which a republic has over a democracy in controlling the effects of faction is enjoyed by a large over a small republic—is enjoyed by the Union over the States composing it. Does this advantage consist in the substitution of representatives whose enlightened views and virtuous sentiments render them superior to local prejudices and to schemes of injustices? It will not be denied that the representation of the Union will be most likely to possess these requisite endowments. Does it consist in the greater security afforded by a greater variety of parties, against the event of any one party being able to outnumber and oppress the rest? In an equal degree does the increased variety of parties comprised within the Union increase this security. Does it, in fine, consist in the greater obstacles opposed to the concert and accomplishment of the secret wishes of an unjust and interested majority? Here again the extent of the Union gives it the most palpable advantage.

The influence of factious leaders may kindle a flame within their particular States but will be unable to spread a general conflagration through the other States. A religious sect may degenerate into a political faction in a part of the Confederacy; but the variety of sects dispersed over the entire face of it must secure the national councils against any danger from that source. A rage for paper money, for an abolition of debts, for an equal division of property, or for any other improper or wicked project, will be less apt to pervade the whole body of the Union than a particular member of it, in the same proportion as such a malady is more likely to taint a particular county or district than an entire State.

In the extent and proper structure of the Union, therefore, we behold a republican remedy for the diseases most incident to republican government. And according to the degree of pleasure and pride we feel in being republicans ought to be our zeal in cherishing the spirit and supporting the character of federalists.

PUBLIUS

NUMBER 39 by James Madison

The last paper having concluded the observations which were meant to introduce a candid survey of the plan of government reported by the convention, we now proceed to the execution of that part of our undertaking.

The first question that offers itself is whether the general form and aspect of the government be strictly republican. It is evident that no other form would be reconcilable with the genius of the people of America; with the fundamental principles of the Revolution; or with that honorable determination which animates every votary of freedom to rest all our political experiments on the capacity of mankind for self-government. If the plans of the convention, therefore, be found to depart from the republican character, its advocates must abandon it as no longer defensible.

What, then, are the distinctive characters of the republican form? Were an answer to this question to be sought, not by recurring to principles but in the application of the term by political writers to the constitutions of different States, no satisfactory one would ever be found. Holland, in which no particle of the supreme authority is derived from the people, has passed almost universally under the denomination of a republic. The same title has been bestowed on Venice, where absolute power over the great body of the people is exercised in the most absolute manner by a small body of hereditary nobles. Poland, which is a mixture of aristocracy and of monarchy in their worst forms, has been dignified with the same appellation. The government of England, which has one republican branch only, combined with an hereditary aristocracy and monarchy, has with equal impropriety been frequently placed on the list of republics. These examples, which are nearly as dissimilar to each other as to a genuine republic, show the extreme inaccuracy with which the term has been used in political disquisitions.

If we resort for a criterion to the different principles on which different forms of government are established, we may define a republic to be, or at least may bestow that name on, a government which derives all its powers directly or indirectly from the great body of the people, and is administered by persons holding their offices during pleasure for a limited period, or during good behavior. It is *essential* to such a government that it be derived from the great body of the society, not from an inconsiderable proportion or a favored class of it; otherwise a handful of tyrannical nobles, exercising their oppressions by a delegation of their powers, might aspire to the rank of republicans and claim for their government the honorable title of republic. It is *sufficient* for such a government that the persons administering it be appointed, either directly or indirectly, by the people; and that they hold their appointments by either of the tenures just specified; otherwise every government in the United States, as well as every other popular government that has been or can be well organized or well executed, would be degraded from the republican character. According to the constitution of every State in the Union, some or other of the officers of government are appointed indirectly only by the people. According to most of them, the chief magistrate himself is so appointed. And according to one, this mode of appointment is extended to one of the co-ordinate branches of the legislature. According to all the constitutions, also, the tenure of the highest offices is extended to a definite period, and in many instances, both within the legislative and executive departments, to a period of years. According to the provisions of most of the constitutions, again, as well as according to the most respectable and received opinions on the subject, the members of the judiciary department are to retain their offices by the firm tenure of good behavior.

On comparing the Constitution planned by the convention with the standard here fixed, we perceived at once that it is, in the most rigid sense, comformable to it. The House of Representatives, like that of one branch at least of all the State legislatures, is elected immediately by the great body of the people. The Senate, like the present Congress and the Senate of Maryland, derives its appointment indirectly from the people. The President is indirectly derived from the choice of the people, according to the example in most of the States. Even the judges, with all other officers of the Union, will, as in the several States, be the choice, though a remote choice, of the people themselves. The duration of the appointments is equally conformable to the republican standard and to the model of State constitutions. The House of Representatives is periodically elective, as in all the States; and for the period of two years, as in the State of South Carolina. The Senate is elective for the period of six years, which is but one year more than the period of the Senate of Maryland, and but two more than that of the Senates of New York and Virginia. The President is to continue in office for the period of four years; as in New York and Delaware the chief magistrate is elected for three years, and in South Carolina for two years. In the other States the election is annual. In several of the States, however, no explicit provision is made for the impeachment of the chief magistrate. And in Delaware and Virginia he is not impeachable till out of office. The President of the United States is impeachable at any time during his continuance in office. The tenure by which the judges are to hold their places is, as it unquestionably ought to be, that of good behavior. The tenure of the ministerial offices generally will be a subject of legal regulation, conformably to the reason of the case and the example of the State constitutions.

Could any further proof be required of the republican complexion of this system, the most decisive one might be found in its absolute prohibition of titles of nobility, both under the federal and the State governments; and in its express guaranty of the republican form to each of the latter.

"But it was not sufficient," say the adversaries of the proposed Constitution, "for the convention to adhere to the republican form. They ought with equal care to have preserved the *federal* form, which regards the Union as a *Confederacy* of sovereign states; instead of which they have framed a *national* government, which regards the Union as a *consolidation* of the States." And it is asked by what authority this bold and radical innovation was undertaken? The handle which has been made of this objection requires that it should be examined with some precision.

Without inquiring into the accuracy of the distinction on which the objection is founded, it will be necessary to a just estimate of its force, first, to ascertain the real character of the government in question; secondly, to inquire how far the convention were authorized to propose such a government; and thirdly, how far the duty they owed to their country could supply any defect of regular authority.

First,—In order to ascertain the real character of the government, it may be considered in relation to the foundation on which it is to be established; to the sources from which its ordinary powers are to be drawn; to the operation of those powers; to the extent of them; and to the authority by which future changes in the government are to be introduced.

On examining the first relation, it appears, on one hand, that the Constitution is to be founded on the assent and ratification of the people of America, given by deputies elected for the special purpose; but, on the other, that this assent and ratification is to be given by the people, not as individuals composing one entire nation, but as composing the distinct and independent States to which they respectively belong. It is to be the assent and ratification of the several States, derived from the supreme authority in each State—the authority of the people themselves. The act, therefore, establishing the Constitution will not be a *national* but a *federal* act.

That it will be a federal and not a national act, as these terms are understood by the objectors—the act of the people, as forming so many independent States, not as forming one aggregate nation—is obvious from this single consideration: that it is to result neither from the decision of a *majority* of the people of the Union, nor from that of a *majority* of the States. It must result from the *unanimous* assent of the several States that are parties to it, differing no otherwise from their ordinary assent than in its being expressed, not by the legislative authority, but by that of the people themselves. Were the people regarded in this transaction as forming one nation, the will of the majority of the whole people of the United States would bind the minority, in the same manner as the majority in each State must bind the minority; and the will of the majority must be determined either by a comparison of the individual votes, or by considering the will of the majority of the States as evidence of the will of a majority of the people of the United States. Neither of these rules has been adopted. Each State, in ratifying the Constitution, is considered as a sovereign body independent of all others, and only to be bound by its own voluntary act. In this relation, then, the new Constitution will, if established, be a *federal* and not a *national* constitution.

The next relation is to the sources from which the ordinary powers of government are to be derived. The House of Representatives will derive its powers from the people of America; and the people will be represented in the same proportion and on the same principle as they are in the legislature of a particular State. So far the government is *national*, not *federal*. The Senate, on the other hand, will derive its powers from the States as political and coequal societies; and these will be represented on the principle of equality in the Senate, as they now are in the existing Congress. So far the government is *federal*, not *national*. The executive power will be derived from a very compound source. The immediate election of the President is to be made by the States in their political characters. The votes allotted to them are in a compound ratio, which considers them partly as distinct and coequal societies, partly as unequal members of the same society. The eventual election, again, is to be made by that branch of the legislature which consists of the national representatives; but in this particular act they are to be thrown into the form of individual delegations from so many distinct and coequal bodies politic. From this aspect of the government it appears to be a mixed character, presenting at least as many *federal* as *national* features.

The difference between a federal and national government, as it relates to the *operation of the government*, is by the adversaries of the plan of the convention supposed to consist in this, that in the former the powers operate on the political bodies composing the Confederacy in their political capacities; in the latter, on the individual citizens composing the nation in their individual capacities. On trying the Constitution by this criterion, it falls under the *national* not the *federal* character; though perhaps not so completely as has been understood. In several cases, and particularly in the trial of controversies to which States may be parties, they must be viewed and proceeded against in their collective and political capacities only. But the operation of the government on the people in their individual capacities, in its ordinary and most essential proceedings, will, in the sense of its opponents, on the whole, designate it, in this relation, a *national* government.

But if the government be national with regard to the *operation* of its powers, it changes its aspect again when we contemplate it in relation to the extent of its powers. The idea of a national government involves in it not only an authority over the individual citizens, but an indefinite supremacy over all persons and things, so far as they are objects of lawful government. Among a people consolidated into one nation, this supremacy is completely vested in the national legislature. Among communities united for particular purposes, it is vested partly in the general and partly in the municipal legislatures. In the former case, all local authorities are subordinate to the supreme; and may be controlled, directed, or abolished by it at pleasure. In the latter, the local or municipal authorities form distinct and independent portions of the supremacy, no more subject, within their respective spheres, to the general authority than the general authority is subject to them, within its own sphere. In this relation, then, the proposed government cannot be deemed a *national* one; since its jurisdiction extends to certain enumerated objects only, and leaves to the several States a residuary and inviolable sovereignty over all other objects. It is true that in controversies relating to the boundary between the two jurisdictions, the tribunal which is ultimately to decide is to be established under the general government. But this does not change the principle of the case. The decision is to be impartially made, according to the rules of the Constitution; and all the usual and most effectual precautions are taken to secure this impartiality. Some such tribunal is clearly essential to prevent an appeal to the sword and a dissolution of the compact; and that it ought to be established under the general rather than under the local governments, or, to speak more properly, that it could be safely established under the first alone, is a position not likely to be combated.

If we try the Constitution by its last relation to the authority by which amendments are to be made, we find it neither wholly *national* nor wholly *federal.* Were it wholly national, the supreme and ultimate authority would reside in the *majority* of the people of the Union; and this authority would be competent at all times, like that of a majority of every national society to alter or abolish its established government. Were it wholly federal, on the other hand, the concurrence of each State in the Union would be essential to every alteration that would be binding on all. The mode provided by the plan of the convention is not founded on either of these principles. In requiring the proportion by *States,* not by *citizens,* it departs from the national and advances towards the *federal* character; in rendering the concurrence of less than the whole number of States sufficient, it loses again the *federal* and partakes of the *national* character.

The proposed Constitution, therefore, even when tested by the rules laid down by its antagonists, is, in strictness, neither a national nor a federal Constitution, but a composition of both. In its foundation it is federal, not national; in the sources from which the ordinary powers of the government are drawn, it is partly federal and partly national; in the operation of these powers, it is national, not federal; in the extent of them, again, it is federal, not national; and, finally in the authoritative mode of introducing amendments, it is neither wholly federal nor wholly national.

PUBLIUS

NUMBER 51 by James Madison

To what expedient, then, shall we finally resort, for maintaining in practice the necessary partition of power among the several departments as laid down in the Constitution? The only answer that can be given is that as all these exterior provisions are found to be inadequate the defect must be supplied, by so contriving the interior structure of the government as that its several constituent parts may, by their mutual relations, be the means of keeping each other in their proper places. Without presuming to undertake a full development of this important idea I will hazard a few general observations which may perhaps place it in a clearer light, and enable us to form a more correct judgment of the principles and structure of the government planned by the convention.

In order to lay a due foundation for that separate and distinct exercise of the different powers of government, which to a certain extent is admitted on all hands to be essential to the preservation of liberty, it is evident that each department should have a will of its own; and consequently should be so constituted that the members of each should have as little agency as possible in the appointment of the members of the others. Were this principle rigorously adhered to, it would require that all the appointments for the supreme executive, legislative, and judiciary magistracies should be drawn from the same fountain of authority, the people, through channels having no communication whatever with one another. Perhaps such a plan of constructing the several departments would be less difficult in practice than it may in contemplation appear. Some difficulties, however, and some additional expense would attend the execution of it. Some deviations, therefore, from the principle must be admitted. In the constitution of the judiciary department in particular, it might be inexpedient to insist rigorously on the principle: first, because peculiar qualifications being essential in the members, the primary consideration ought to be to select that mode of choice which best secures these qualifications; second, because the permanent tenure by which the appointments are held in that department must soon destroy all sense of dependence on the authority conferring them.

It is equally evident that the members of each department should be as little dependent as possible on those of the others for the emoluments annexed to their offices. Were the executive magistrate, or the judges, not independent of the legislature in this particular, their independence in every other would be merely nominal.

But the great security against a gradual concentration of the several powers in the same department consists in giving to those who administer each department the necessary constitutional means and personal motives to resist encroachments of the others. The provision for defense must in this, as in all other cases, be made commensurate to the danger of attack. Ambition must be made to counteract ambition. The interest of the man must be connected with the constitutional rights of the place. It may be a reflection on human nature that such devices should be necessary to control the abuses of government. But what is government itself but the greatest of all reflections on human nature? If men were angels, no government would be necessary. If angels were to govern men, neither external nor internal controls on government would be necessary. In framing a government which is to be administered by men over men, the great difficulty lies in this: you must first enable the government to control the governed; and in the next place oblige it to control itself. A dependence on the people is, no doubt, the primary control on the government; but experience has taught mankind the necessity of auxiliary precautions.

This policy of supplying, by opposite and rival interests, the defect of better motives, might be traced through the whole system of human affairs, private as well as public. We see it particularly displayed in all the subordinate distributions of power, where the constant aim is to divide and arrange the several offices in such a manner as that each may be a check on the other—that the private interest of every individual may be a sentinel over the public rights. These inventions of prudence cannot be less requisite in the distribution of the supreme powers of the State.

But it is not possible to give to each department an equal power of self-defense. In republican government, the legislative authority necessarily predominates. The remedy for this inconvenience is to divide the legislature into different branches; and to render them, by different modes of election and different principles of action, as little connected with each other as the nature of their common functions and their common dependence on the society will admit. It may even be necessary to guard against dangerous encroachments by still further precautions. As the weight of the legislative authority requires that it should be thus divided, the weakness of the executive may require, on the other hand, that it should be fortified. An absolute negative on the legislature appears, at first view, to be the natural defense with which the executive magistrate should be armed. But perhaps it would be neither altogether safe nor alone sufficient. On ordinary occasions it might not be exerted with the requisite firmness, and on extraordinary occasions it might be perfidiously abused. May not this defect of an absolute negative be supplied by some qualified connection between this weaker department and the weaker branch of the stronger department, by which the latter may be led to support the constitutional rights of the former, without being too much detached from the rights of its own department?

If the principles on which these observations are founded be just, as I persuade myself they are, and they be applied as a criterion to the several State constitutions, and to the federal Constitution, it will be found that if the latter does not perfectly correspond with them, the former are infinitely less able to bear such a test.

There are, moreover, two considerations particularly applicable to the federal system of America, which place that system in a very interesting point of view.

First. In a single republic, all the power surrendered by the people is submitted to the administration of a single government; and the usurpations are guarded against by a division of the government into distinct and separate departments. In the compound republic of America, the power surrendered by the people is first divided between two distinct governments, and then the portion allotted to each subdivided among distinct and separate departments. Hence a double security arises to the rights of the people. The different governments will control each other, at the same time that each will be controlled by itself.

Second. It is of great importance in a republic not only to guard the society against the oppression of its rulers, but to guard one part of the society against the injustice of the other part. Different interests necessarily exist in different classes of citizens. If a majority be united by a common interest, the rights of the minority will be insecure. There are but two methods of providing against this evil: the one by creating a will in the community independent of the majority—that is, of the society itself; the other, by comprehending in the society so many separate descriptions of citizens as will render an unjust combination of a majority of the whole very improbable, if not impracticable. The first method prevails in all governments possessing an hereditary or self-appointed authority. This, at best, is but a precarious security; because a power independent of the society may as well espouse the unjust views of the major as the rightful interests of the minor party, and may possibly be turned against both parties. The second method will be exemplified in the federal republic of the United States. Whilst all authority in it will be derived from and dependent on the society, the society itself will be broken into so many parts, interests and classes of citizens, that the rights of individuals, or of the minority, will be in little danger from interested combinations of the majority. In a free government the security for civil rights must be the same as that for religious rights. It consists in the one case in the multiplicity of interests, and in the other in the multiplicity of sects. The degree of security in both cases will depend on the number of interests and sects; and this may be presumed to depend on the extent of country and number of people comprehended under the same government. This view of the subject must particularly recommend a proper federal system to all the sincere and considerate friends of republican government, since it shows that in exact proportion as the territory of the Union may be formed into more circumscribed Confederacies, or States, oppressive combinations of a majority will be facilitated; the best security, under the republican forms, for the rights of every class of citizen, will be diminished; and consequently the stability and independence of some member of the government, the only other security, must be proportionally increased. Justice is the end of government. It is the end of civil society. It ever has been and ever will be pursued until it be obtained, or until liberty be lost in the pursuit. In a society under the forms of which the stronger faction can readily unite and oppress the weaker, anarchy may as truly be said to reign as in a state of nature, where the weaker individual is not secured against the violence of the stronger; and as, in the latter state, even the stronger individuals are prompted, by the uncertainty of their condition, to submit to a government which may protect the weak as well as themselves; so, in the former state, will the more powerful factions or parties be gradually induced, by a like motive, to wish for a government which will protect all parties, the weaker as well as the more powerful. It can be little doubted that if the State of Rhode Island was separated from the Confederacy and left to itself, the insecurity of rights under the popular form of government within such narrow limits would be displayed by such reiterated oppressions of factious majorities that some power altogether independent of the people would soon be called for by the voice of the very factions whose misrule had proved the necessity of it. In the extended republic of the United States, and among the great variety of interests, parties, and sects which it embraces, a coalition of a majority of the whole society could seldom take place on any other principles than those of justice and the general good; whilst there being thus less danger to a minor from the will of a major party, there must be less pretext, also, to provide for the security of the former, by introducing into the government a will not dependent on the latter, or, in other words, a will independent of the society itself. It is no less certain than it is important, notwithstanding the contrary opinions which have been entertained, that the larger the society, provided it lie within a practicable sphere, the more duly capable it will be of self-government. And happily for the *republican cause,* the practicable sphere may be carried to a very great extent by a judicious modification and mixture of the *federal principle.* PUBLIUS

NUMBER 70 by Alexander Hamilton

There is an idea, which is not without its advocates, that a vigorous executive is inconsistent with the genius of republican government. The enlightened well-wishers to this species of government must at least hope that the supposition is destitute of foundation; since they can never admit its truth, without at the same time admitting the condemnation of their own principles. Energy in the executive is a leading character in the definition of good government. It is essential to the protection of the community against foreign attacks; it is not less essential to the steady administration of the laws; to the protection of property against those irregular and high-handed combinations which sometimes interrupt the ordinary course of justice; to the security of liberty against the enterprises and assaults of ambition, of faction, and of anarchy. Every man the least conversant in Roman history knows how often that republic was obliged to take refuge in the absolute power of a single man, under the formidable title of dictator, as well against the intrigues of ambitious individuals who aspired to the tyranny, and the seditions of whole classes of the community whose conduct threatened the existence of all government, as against the invasions of external enemies who menaced the conquest and destruction of Rome.

There can be no need, however, to multiply arguments or examples on this head. A feeble executive implies a feeble execution of the government. A feeble execution is but another phrase for a bad execution; and a government ill executed, whatever it may be in theory, must be, in practice, a bad government.

Taking it for granted, therefore, that all men of sense will agree in the necessity of an energetic executive, it will only remain to inquire, what are the ingredients which constitute this energy? How far can they be combined with those other ingredients which constitute safety in the republican sense? And how far does this combination characterize the plan which has been reported by the convention?

The ingredients which constitute energy in the executive are unity; duration; an adequate provision for its support; and competent powers.

The ingredients which constitute safety in the republican sense are a due dependence on the people, and a due responsibility.

Those politicians and statesmen who have been the most celebrated for the soundness of their principles and for the justness of their views have declared in favor of a single executive and a numerous legislature. They have, with great propriety, considered energy as the most necessary qualification of the former, and have regarded this as most applicable to power in a single hand; while they have, with equal propriety, considered the latter as best adapted to deliberation and wisdom, and best calculated to conciliate the confidence of the people and to secure their privileges and interests.

That unity is conducive to energy will not be disputed. Decision, activity, secrecy, and dispatch will generally characterize the proceedings of one man in a much more eminent degree than the proceedings of any greater number; and in proportion as the number is increased, these qualities will be diminished.

This unity may be destroyed in two ways: either by vesting the power in two or more magistrates of equal dignity and authority, or by vesting it ostensibly in one man, subject in whole or in part to the control and cooperation of others, in the capacity of counselors to him. Of the first, the two consuls of Rome may serve as an example; of the last, we shall find examples in the constitutions of several of the States. New York and New Jersey, if I recollect right, are the only States which have intrusted the executive authority wholly to single men. Both these methods of destroying the unity of the executive have their partisans; but the votaries of an executive council are the most numerous. They are both liable, if not to equal, to similar objections, and may in most lights be examined in conjunction.

The experience of other nations will afford little instruction on this head. As far, however, as it teaches anything, it teaches us not to be enamored of plurality in the executive. We have seen that the Achæans, on an experiment of two Prætors, were induced to abolish one. The Roman history records many instances of mischiefs to the republic from the dissensions between the consuls, and between the military tribunes, who were at times substituted for the consuls. But it gives us no specimens of any peculiar advantages derived to the state from the circumstance of the plurality of those magistrates. That the dissensions between them were not more frequent or more fatal is matter of astonishment, until we advert to the singular position in which the republic was almost continually placed, and to the prudent policy pointed out by the circumstances of the state, and pursued by the consuls, of making a division of the government between them. The patricians engaged in a perpetual struggle with the plebeians for the preservation of their ancient authorities and dignities; the consuls, who were generally chosen out of the former body, were commonly united by the personal interest they had in the defense of the privileges of their order. In addition to this motive of union, after the arms of the republic had considerably expanded the bounds of its empire, it became an established custom with the consuls to divide the administration between themselves by lot—one of them remaining at Rome to govern the city and its environs, the other taking command in the more distant provinces. This expedient must no doubt have had great influence in preventing those collisions and rivalships which might otherwise have embroiled the peace of the republic.

But quitting the dim light of historical research, and attaching ourselves purely to the dictates of reason and good sense, we shall discover much greater cause to reject than to approve the idea of plurality in the executive, under any modification whatever.

Whenever two or more persons are engaged in any common enterprise or pursuit, there is always danger of difference of opinion. If it be a public trust or office in which they are clothed with equal dignity and authority, there is peculiar danger of personal emulation and even animosity. From either, and especially from all these causes, the most bitter dissensions are apt to spring. Whenever these happen, they lessen the respectability, weaken the authority, and distract the plans and operations of those whom they divide. If they should unfortunately assail the supreme executive magistracy of a country, consisting of a plurality of persons, they might impede or frustrate the most important measures of the government in the most critical emergencies of the state. And what is still worse, they might split the community into the most violent and irreconcilable factions, adhering differently to the different individuals who composed the magistracy.

Men often oppose a thing merely because they have had no agency in planning it, or because it may have been planned by those whom they dislike. But if they have been consulted, and have happened to disapprove, opposition then becomes, in their estimation, an indispensable duty of self-love. They seem to think themselves bound in honor, and by all the motives of personal infallibility, to defeat the success of what has been resolved upon contrary to their sentiments. Men of upright, benevolent tempers have too many opportunities of remarking, with horror, to what desperate lengths this disposition is sometimes carried, and how often the great interests of society are sacrificed to the vanity, to the conceit, and to the obstinacy of individuals, who have credit enough to make their passions and their caprices interesting to mankind. Perhaps the question now before the public may, in its consequences, afford melancholy proofs of the effects of this despicable frailty, or rather detestable vice, in the human character.

Upon the principles of a free government, inconveniences from the source just mentioned must necessarily be submitted to in the formation of the legislature; but it is unnecessary, and therefore unwise, to introduce them into the constitution of the executive. It is here too that they may be most pernicious. In the legislature, promptitude of decision is oftener an evil than a benefit. The differences of opinion, and the jarring of parties in that department of the government, though they may sometimes obstruct salutary plans, yet often promote deliberation and circumspection, and serve to check excesses in the majority. When a resolution too is once taken, the opposition must be at an end. That resolution is a law, and resistance to it punishable. But no favorable circumstances palliate or atone for the disadvantages of dissension in the executive department. Here they are pure and unmixed. There is no point at which they cease to operate. They serve to embarrass and weaken the execution of the plan or measure to which they relate, from the first step to the final conclusion of it. They constantly counteract those qualities in the executive which are the most necessary ingredients in its composition—vigor and expedition, and this without any counterbalancing good. In the conduct of war, in which the energy of the executive is the bulwark of the national security, everything would be to be apprehended from its plurality.

It must be confessed that these observations apply with principal weight to the first case supposed—that is, to a plurality of magistrates of equal dignity and authority, a scheme, the advocates for which are not likely to form a numerous sect; but they apply, though not with equal yet with considerable weight to the project of a council, whose concurrence is made constitutionally necessary to the operations of the ostensible executive. An artful cabal in that council would be able to distract and to enervate the whole system of administration. If no such cabal should exist, the mere diversity of views and opinions would alone be sufficient to tincture the exercise of the executive authority with a spirit of habitual feebleness and dilatoriness.

But one of the weightiest objections to a plurality in the executive, and which lies as much against the last as the first plan is that it tends to conceal faults and destroy responsibility. Responsibility is of two kinds—to censure and to punishment. The first is the more important of the two, especially in an elective office. Men in public trust will much oftener act in such a manner as to render them unworthy of being any longer trusted, than in such a manner as to make them obnoxious to legal punishment. But the multiplication of the executive adds to the difficulty of detection in either case. It often becomes impossible, amidst mutual accusations, to determine on whom the blame or the punishment of a pernicious measure, or series of pernicious measures, ought really to fall. It is shifted from one to another with so much dexterity, and under such plausible appearances, that the public opinion is left in suspense about the real author. The circumstances which may have led to any national miscarriage or misfortune are sometimes so complicated that where there are a number of actors who may have had different degrees and kinds of agency, though we may clearly see upon the whole that there has been mismanagement, yet it may be impracticable to pronounce to whose account the evil which may have been incurred is truly chargeable.

"I was overruled by my council. The council were so divided in their opinions that it was impossible to obtain any better resolution on the point." These and similar pretexts are constantly at hand, whether true or false. And who is there that will either take the trouble or incur the odium of a strict scrutiny into the secret springs of the transaction? Should there be found a citizen zealous enough to undertake the unpromising task, if there happened to be a collusion between the parties concerned, how easy it is to clothe the circumstances with so much ambiguity as to render it uncertain what was the precise conduct of any of those parties.

In the single instance in which the governor of this State is coupled with a council—that is, in the appointment to offices, we have seen the mischiefs of it in the view now under consideration. Scandalous appointments to important offices have been made. Some cases, indeed, have been so flagrant that ALL PARTIES have agreed in the impropriety of the thing. When inquiry has been made, the blame has been laid by the governor on the members of the council, who, on their part, have charged it upon his nomination; while the people remain altogether at a loss to determine by whose influence their interests have been committed to hands so unqualified and so manifestly improper. In tenderness to individuals, I forbear to descend to particulars.

It is evident from these considerations that the plurality of the executive tends to deprive the people of the two greatest securities they can have for the faithful exercise of any delegated power, *first,* the restraints of public opinion, which lose their efficacy, as well on account of the division of the censure attendant on bad measures among a number as on account of the uncertainty on whom it ought to fall; and, *second,* the opportunity of discovering with facility and clearness the misconduct of the persons they trust, in order either to their removal from office or to their actual punishment in cases which admit of it.

In England, the king is a perpetual magistrate; and it is a maxim which has obtained for the sake of the public peace that he is unaccountable for his administration, and his person sacred. Nothing, therefore, can be wiser in that kingdom than to annex to the king a constitutional council, who may be responsible to the nation for the advice they give. Without this, there would be no responsibility whatever in the executive department—an idea inadmissible in a free government. But even there the king is not bound by the resolutions of his council, though they are answerable for the advice they give. He is the absolute master of his own conduct in the exercise of his office and may observe or disregard the counsel given to him at his sole discretion.

But in a republic where every magistrate ought to be personally responsible for his behavior in office, the reason which in the British Constitution dictates the propriety of a council not only ceases to apply, but turns against the institution. In the monarchy of Great Britain, it furnishes a substitute for the prohibited responsibility of the Chief Magistrate, which serves in some degree as a hostage to the national justice for his good behavior. In the American republic, it would serve to destroy, or would greatly diminish, the intended and necessary responsibility of the Chief Magistrate himself.

The idea of a council to the executive, which has so generally obtained in the State constitutions, has been derived from that maxim of republican jealousy which considers power as safer in the hands of a number of men than of a single man. If the maxim should be admitted to be applicable to the case, I should contend that the advantage on that side would not counterbalance the numerous disadvantages on the opposite side. But I do not think the rule at all applicable to the executive power. I clearly concur in opinion, in this particular, with a writer whom the celebrated Junius pronounces to be "deep, solid, and ingenious," that "the executive power is more easily confined when it is one", that it is far more safe there should be a single object for the jealousy and watchfulness of the people; and, in a word, that all multiplication of the executive is rather dangerous than friendly to liberty.

A little consideration will satisfy us that the species of security sought for in the multiplication of the executive is unattainable. Numbers must be so great as to render combination difficult, or they are rather a source of danger than of security. The united credit and influence of several individuals must be more formidable to liberty than the credit and influence of either of them separately. When power, therefore, is placed in the hands of so small a number of men as to admit of their interests and views being easily combined in a common enterprise, by an artful leader, it becomes more liable to abuse, and more dangerous when abused, than if it be lodged in the hands of one man, who, from the very circumstance of his being alone, will be more narrowly watched and more readily suspected, and who cannot unite so great a mass of influence as when he is associated with others. The decemvirs of Rome, whose name denotes their number, were more to be dreaded in their usurpation than any ONE of them would have been. No person would think of proposing an executive much more numerous than that body; from six to a dozen have been suggested for the number of the council. The extreme of these numbers is not too great for an easy combination; and from such a combination America would have more to fear than from the ambition of any single individual. A council to a magistrate, who is himself responsible for what he does, are generally nothing better than a clog upon his good intentions, are often the instruments and accomplices of his bad, and are almost always a cloak to his faults.

I forbear to dwell upon the subject of expense; though it be evident that if the council should be numerous enough to answer the principal end aimed at by the institution, the salaries of the members, who must be drawn from their homes to reside at the seat of government, would form an item in the catalogue of public expenditures too serious to be incurred for an object of equivocal utility.

I will only add that, prior to the appearance of the Constitution, I rarely met with an intelligent man from any of the States who did not admit, as the result of experience, that the UNITY of the executive of this State was one of the best of the distinguishing features of our Constitution.

PUBLIUS

NUMBER 78 by Alexander Hamilton

We proceed now to an examination of the judiciary department of the proposed government.

In unfolding the defects of the existing Confederation, the utility and necessity of a federal judicature have been clearly pointed out. It is the less necessary to recapitulate the considerations there urged as the propriety of the institution in the abstract is not disputed; the only questions which have been raised being relative to the manner of constituting it, and to its extent. To these points, therefore, our observations shall be confined.

The manner of constituting it seems to embrace these several objects: 1st. The mode of appointing the judges. 2nd. The tenure by which they are to hold their places. 3rd. The partition of the judiciary authority between different courts and their relations to each other.

First. As to the mode of appointing the judges: this is the same with that of appointing the officers of the Union in general and has been so fully discussed in the two last numbers that nothing can be said here which would not be useless repetition.

Second. As to the tenure by which the judges are to hold their places: this chiefly concerns their duration in office, the provisions for their support, the precautions for their responsibility.

According to the plan of the convention, all judges who may be appointed by the United States are to hold their offices *during good behavior;* which is conformable to the most approved of the State constitutions, and among the rest, to that of this State. Its propriety having been drawn into question by the adversaries of that plan is no light symptom of the rage for objection which disorders their imaginations and judgments. The standard of good behavior for the continuance in office of the judicial magistracy is certainly one of the most valuable of the modern improvements in the practice of government. In a monarchy it is an excellent barrier to the despotism of the prince; in a republic it is a no less excellent barrier to the encroachments and oppressions of the representative body. And it is the best expedient which can be devised in any government to secure a steady, upright, and impartial administration of the laws.

Whoever attentively considers the different departments of power must perceive that, in a government in which they are separated from each other, the judiciary, from the nature of its functions, will always be the least dangerous to the political rights of the Constitution; because it will be least in a capacity to annoy or injure them. The executive not only dispenses the honors but holds the sword of the community. The legislature not only commands the purse but prescribes the rules by which the duties and rights of every citizen are to be regulated. The judiciary, on the contrary, has no influence over either the sword or the purse; no direction either of the strength or of the wealth of the society, and can take no active resolution whatever. It may truly be said to have neither FORCE nor WILL but merely judgment; and must ultimately depend upon the aid of the executive arm even for the efficacy of its judgments.

This simple view of the matter suggests several important consequences. It proves incontestably that the judiciary is beyond comparison the weakest of the three departments of power; that it can never attack with success either of the other two; and that all possible care is requisite to enable it to defend itself against their attacks. It equally proves that though individual oppression may now and then proceed from the courts of justice, the general liberty of the people can never be endangered from that quarter; I mean so long as the judiciary remains truly distinct from both the legislature and the executive. For I agree that "there is no liberty if the power of judging be not separated from the legislative and executive power." And it proves, in the last place, that as liberty can have nothing to fear from the judiciary alone, but would have everything to fear from its union with either of the other departments; that as all the effects of such a union must ensue from a dependence of the former on the latter, notwithstanding a nominal and apparent separation; that as, from the natural feebleness of the judiciary, it is in continual jeopardy of being overpowered, awed, or influenced by its co-ordinate branches; and that as nothing can contribute so much to its firmness and independence as permanency in office, this quality may therefore by justly regarded as an indispensable ingredient in its constitution, and, in a great measure, as the citadel of the public justice and the public security.

The complete independence of the courts of justice is peculiarly essential in a limited Constitution. By a limited Constitution, I understand one which contains certain specified exceptions to the legislative authority; such , for instance, as that it shall pass no bills of attainder, no *ex post facto* laws, and the like. Limitations of this kind can be preserved in practice no other way than through the medium of courts of justice, whose duty it must be to declare all acts contrary to the manifest tenor of the Constitution void. Without this, all the reservations of particular rights or privileges would amount to nothing.

Some perplexity respecting the rights of the courts to pronounce legislative acts void, because contrary to the Constitution, has arisen from an imagination that the doctrine would imply a superiority of the judiciary to the legislative power. It is urged that the authority which can declare the acts of another void must necessarily be superior to the one whose acts may be declared void. As this doctrine is of great importance in all the American constitutions, a brief discussion of the grounds on which it rests cannot be unacceptable.

There is no position which depends on clearer principles than that every act of a delegated authority, contrary to the tenor of the commission under which it is exercised, is void. No legislative act, therefore, contrary to the Constitution, can be valid. To deny this would be to affirm that the deputy is greater than his principal; that the servant is above his master; that the representatives of the people are superior to the people themselves; that men acting by virtue of powers may do not only what their powers do not authorize, but what they forbid.

If it be said that the legislative body are themselves the constitutional judges of their own powers and that the construction they put upon them is conclusive upon the other departments it may be answered that this cannot be the natural presumption where it is not to be collected from any particular provisions in the Constitution. It is not otherwise to be supposed that the Constitution could intend to enable the representatives of the people to substitute their *will* to that of their constituents. It is far more rational to suppose that the courts were designed to be an intermediate body between the people and the legislature in order, among other things, to keep the latter within the limits assigned to their authority. The interpretation of the laws is the proper and peculiar province of the courts. A constitution is, in fact, and must be regarded by the judges as, a fundamental law. It therefore belongs to them to ascertain its meaning as well as the meaning of any particular act proceeding from the legislative body. If there should happen to be an irreconcilable variance between the two, that which has the superior obligation and validity ought, of course, to be preferred; or, in other words, the Constitution ought to be preferred to the statute, the intention of the people to the intention of their agents.

Nor does this conclusion by any means suppose a superiority of the judicial to the legislative power. It only supposes that the power of the people is superior to both, and that where the will of the legislature, declared in its statutes, stand in opposition to that of the people, declared in the Constitution, the judges ought to be governed by the latter rather than the former. They ought to regulate their decisions by the fundamental laws rather than by those which are not fundamental.

This exercise of judicial discretion in determining between two contradictory laws is exemplified in a familiar instance. It not uncommonly happens that there are two statutes existing at one time, clashing in whole or in part with each other and neither of them containing any repealing clause or expression. In such a case, it is the province of the courts to liquidate and fix their meaning and operation. So far as they can, by any fair construction, be reconciled to each other, reason and law conspire to dictate that this should be done; where this is impracticable, it becomes a matter of necessity to give effect to one in exclusion of the other. The rule which has obtained in the courts for determining their relative validity is that the last in order of time shall be preferred to the first. But this is a mere rule of construction, not derived from any positive law but from the nature and reason of the thing. It is a rule not enjoined upon the courts by legislative provision but adopted by themselves, as consonant to truth and propriety, for the direction of their conduct as interpreters of the law. They thought it reasonable that between the interfering acts of an *equal* authority that which was the last indication of its will should have the preference.

But in regard to the interfering acts of a superior and subordinate authority of an original and derivative power, the nature and reason of the thing indicate the converse of that rule as proper to be followed. They teach us that the prior act of a superior ought to be preferred to the subsequent act of an inferior and subordinate authority; and that accordingly, whenever a particular statute contravenes the Constitution, it will be the duty of the judicial tribunals to adhere to the latter and disregard the former.

It can be of no weight to say that the courts, on the pretense of a repugnancy, may substitute their own pleasure to the constitutional intentions of the legislature. This might as well happen in the case of two contradictory statutes; or it might as well happen in every adjudication upon any single statute. The courts must declare the sense of the law; and if they should be disposed to exercise WILL instead of JUDGMENT, the consequence would equally be the substitution of their pleasure to that of the legislative body. The observation, if it proved anything, would prove that there ought to be no judges distinct from that body.

If, then, the courts of justice are to be considered as the bulwarks of a limited Constitution against legislative encroachments, this consideration will afford a strong argument for the permanent tenure of judicial offices, since nothing will contribute so much as this to that independent spirit in the judges which must be essential to the faithful performance of so arduous a duty.

This independence of the judges is equally requisite to guard the Constitution and the rights of individuals from the effects of those ill humors which the arts of designing men, or the influence of particular conjunctures, sometimes disseminate among the people themselves, and which, though they speedily give place to better information, and more deliberate reflection, have a tendency, in the meantime, to occasion dangerous innovations in the government, and serious oppressions of the minor party in the community. Though I trust the friends of the proposed Constitution will never concur with its enemies in questioning that fundamental principle of republican government which admits the right of the people to alter or abolish the established Constitution whenever they find it inconsistent with their happiness; yet it is not to be inferred from this principle that the representatives of the people, whenever a momentary inclination happens to lay hold of a majority of their constituents incompatible with the provisions in the existing Constitution would, on that account, be justifiable in a violation of those provisions; or that the courts would be under a greater obligation to connive at infractions in this shape than when they proceeded wholly from the cabals of the representative body. Until the people have, by some solemn and authoritative act, annulled or changed the established form, it is binding upon themselves collectively, as well as individually; and no presumption, or even knowledge of their sentiments, can warrant their representatives in a departure from it prior to such an act. But it is easy to see that it would require an uncommon portion of fortitude in the judges to do their duty as faithful guardians of the Constitution, where legislative invasions of it had been instigated by the major voice of the community.

But it is not with a view to infractions of the Constitution only that the independence of the judges may be an essential safeguard against the effects of occasional ill humors in the society. These sometimes extend no farther than to the injury of the private rights of particular classes of citizens, by unjust or partial laws. Here also the firmness of the judicial magistracy is of vast importance in mitigating the severity and confining the operation of such laws. It not only serves to moderate the immediate mischiefs of those which may have been passed but it operates as a check upon the legislative body in passing them; who, perceiving that obstacles to the success of an iniquitous intention are to be expected from the scruples of the courts, are in a manner compelled, by the very motives of the injustice they meditate, to qualify their attempts. This is a circumstance calculated to have more influence upon the character of our governments than but few may be aware of. The benefits of the integrity and moderation of the judiciary have already been felt in more States than one; and though they may have displeased those whose sinister expectations they may have disappointed, they must have commanded the esteem and applause of all the virtuous and disinterested. Considerate men of every description ought to prize whatever will tend to beget or fortify that temper in the courts; as no man can be sure that he may not be tomorrow the victim of a spirit of injustice, by which he may be a gainer today. And every man must now feel that the inevitable tendency of such a spirit is to sap the foundations of public and private confidence and to introduce in its stead universal distrust and distress.

That inflexible and uniform adherence to the rights of the Constitution, and of individuals, which we perceive to be indispensable in the courts of justice, can certainly not be expected from judges who hold their offices by a temporary commission. Periodical appointments, however regulated, or by whomsoever made, would, in some way or other, be fatal to their necessary independence. If the power of making them was committed either to the executive or legislature there would be danger of an improper complaisance to the branch which possessed it; if to both, there would be an unwillingness to hazard the displeasure of either; if to the people, or to persons chosen by them for the special purpose, there would be too great a disposition to consult popularity to justify a reliance that nothing would be consulted but the Constitution and the laws.

There is yet a further and weighty reason for the permanency of the judicial offices which is deducible from the nature of the qualifications they require. It has been frequently remarked with great propriety that a voluminous code of laws is one of the inconveniences necessarily connected with the advantages of a free government. To avoid an arbitrary discretion in the courts, it is indispensable that they should be bound down by strict rules and precedents which serve to define and point out their duty in every particular case that comes before them; and it will readily be conceived from the variety of controversies which grow out of the folly and wickedness of mankind that the records of those precedents must unavoidably swell to a very considerable bulk and must demand long and laborious study to acquire a competent knowledge of them. Hence it is that there can be but few men in the society who will have sufficient skill in the laws to qualify them for the stations of judges. And making the proper deductions for the ordinary depravity of human nature, the number must be still smaller of those who unite the requisite integrity with the requisite knowledge. These considerations apprise us that the government can have no great option between fit characters; and that a temporary duration in office which would naturally discourage such characters from quitting a lucrative line of practice to accept a seat on the bench would have a tendency to throw the administration of justice into hands less able and less well qualified to conduct it with utility and dignity. In the present circumstances of this country and in those in which it is likely to be for a long time to come, the disadvantages on this score would be greater than they may at first sight appear; but it must be confessed that they are far inferior to those which present themselves under the other aspects of the subject.

Upon the whole, there can be no room to doubt that the convention acted wisely in copying from the models of those constitutions which have established *good behavior* as the tenure of their judicial offices, in point of duration; and that so far from being blamable on this account, their plan would have been inexcusably defective if it had wanted this important feature of good government. The experience of Great Britain affords an illustrious comment on the excellence of the institutions.

PUBLIUS

CHAPTER II

Origins and Purposes of the Constitution

OVERVIEW FOR TEACHERS

This chapter includes twelve lessons, which treat the concept of constitution—its origins and purposes in American civilization. The meaning of constitutional government is emphasized and constitutional law is distinguished from other kinds of laws and rules.

The main ideas of the state constitutions written during the War for Independence are treated, as are the Articles of Confederation. Various opinions about the Articles of Confederation are presented in excerpts from primary sources of the years 1783-1787.

These lessons also deal with certain aspects of the Constitutional Convention and the subsequent contest over ratification. Finally, ideas of proponents and opponents of the Constitution of 1787 are included.

Given the mission of this project, the events of American constitutional history during the 1780s are not treated comprehensively in this book. Rather, these lessons may be used to supplement treatments of this period in high school American history, civics, and government textbooks. Thus, subjects that are discussed amply in the textbooks are not treated in this group of lessons; neither are topics that do not fit standard curriculum guides and textbooks. The lessons in this book are to be linked to the curriculum to enhance it. It is assumed that the chronological presentations of events in the textbooks provide an appropriate historical context in which to fit these lessons.

LIST OF LESSONS IN CHAPTER II

II-1. What Is A Constitution?

II-2. Anatomy of Constitutions

II-3. State Constitutions, 1776-1780

II-4. The Articles of Confederation (First Constitution of the United States)

II-5. Opinions About Government Under the Articles of Confederation.

II-6. Washington's Decision to Attend the Constitutional Convention

II-7. Decisions About the Presidency at the Constitutional Convention, 1787

II-8. Ideas from *The Federalist* Papers

II-9. Ideas from Papers of the Antifederalists

II-10. Decisions About the Constitution at the Massachusetts Convention, 1788

II-11. Decisions About the Bill of Rights, 1787-1791

II-12. Timetable of Main Events in the Making of the Constitution, 1781-1791

II-1. WHAT IS A CONSTITUTION?

LESSON PLAN AND NOTES FOR TEACHERS

Preview of Main Points

The theme of this lesson is the concept of constitution. Three main characteristics of a constitution are treated: (1) a constitution is a supreme law of the land; (2) a constitution is a framework for government; (3) a constitution is a legitimate way to grant and limit powers of government officials. Constitutional law is distinguished from statutory law. Finally, examples of constitutional government are discussed.

Connection to Textbooks

This lesson can be used to introduce textbook chapters about the Constitutional Convention. The lesson could enrich chapters in government and history texts where only sketchy definitions of the meaning of constitution and related concepts are presented.

Objectives

Students are expected to:

1. Identify main characteristics of a constitution.
2. Use the main characteristics that constitute a simple definition of a constitution to organize and interpret information.
3. Distinguish between constitutional law and statutory law.
4. Identify examples of constitutional government.
5. Use the concepts of constitution, constitutional law, and constitutional government to interpret ideas and information.

Suggestion for Teaching the Lesson

This is a concept-learning lesson. It follows a teaching strategy known as "rule-example-application." In this strategy, a concept—such as constitution—is presented systematically through the use of definitions (rules) and examples. Students are asked to apply the definitions presented to the organization and interpretation of information. Students are involved in an "application exercise" at the end of each main section of the lesson and at the end of the lesson. These "application exercises" are tests of student ability to use the ideas presented in the main body of the lesson.

Opening the Lesson

- Remind students that to understand American history (or American government) without understanding the meaning of constitution and the idea of constitutionalism is like trying to follow a football game without knowing the purpose and rules of the game.

- Explain that this lesson is designed to help them learn the meaning of constitution, constitutional law, and constitutional government.

- Initiate discussion by asking students to respond to the main question of the lesson: What is a constitution? Conduct a tentative, speculative discussion as a way to focus attention and arouse curiosity about the remainder of the lesson.

Developing the Lesson

- Ask students to read the lesson and to complete the four application exercises at the end of each of the four sections of the lesson.

- Conduct a discussion of the four application exercises. Use this discussion to determine the extent to which students understand the concepts of constitution and constitutional government. Try to correct misunderstandings that may be revealed by students in this discussion.

Concluding the Lesson

- Conduct a discussion of the questions that appear at the end of the lesson. These questions follow the heading: "Reviewing and Applying Knowledge About the Idea of a Constitution."

- Use this learning activity as a final gauge of the extent to which students comprehend the concept of constitution, as presented in this lesson.

II-1. WHAT IS A CONSTITUTION?

Only seven of the nations in the world do not have written constitutions. Constitutions are found in rich countries and poor countries, large countries and small countries, old nations and new ones. In the United States we have one national constitution and fifty state constitutions.

Nearly all constitutions follow the format of a single, comprehensive written document, as the Constitution of the United States of America does. A few countries—the United Kingdom , Israel, and New Zealand—have unwritten constitutions. The constitution in such a country consists of legislative acts, court decisions, and customs never collected or summarized in one document. These customs, decisions, and laws possess the status and the function of a constitution, even though no one has written them all up as one document.

The United States Constitution—written in 1787—is by far the world's oldest. Many of the constitutions in operation today have existed only since 1960. In the modern world, constitution-making stands as a continuing and important activity.

What is a constitution?

A Constitution is: (1) the supreme law of a land; (2) a framework for government; and (3) a legitimate vehicle for granting and limiting the power of government officials.

The Constitution Is the Supreme Law

A constitution is the supreme or highest law of the land. For example, there is no law within the United States of America that can supersede the Constitution of the United States. Article VI of the U.S. Constitution states this principle: "The Constitution, and the laws of the United States which shall be made in Pursuance thereof,. . . shall be the Supreme Law of the Land."

All laws, passed either by the Congress in Washington or by state legislatures, must conform to the supreme law—the Constitution. Alexander Hamilton explained this subordination in *The Federalist* (#78): "No legislative act contrary to the Constitution, therefore, can be valid."

EXERCISES FOR LESSON II-1

Read the following items. Do they illustrate the role of the Constitution as the supreme law of the land? Explain.

1. The Constitution of the State of Indiana includes no statements that contradict the Constitution of the United States.
2. The legislature of the State of Ohio passed a law that conflicted with the First Amendment of the U.S. Constitution. In a court case involving this law a judge declared that law unconstitutional (null and void).

A Constitution Is a Framework for Government

Most national constitutions serve as general plans of government. They establish a general framework for organizing and operating a government. They are not detailed blueprints for governing on a day-to-day basis. The United States Constitution, for example, consists of only 7,500 words. It does not attempt to consider the details of how to run our national government. People who run the government supply details that fit the general framework.

President Woodrow Wilson noted that the U.S. Constitution merely outlines the organization and operation of the government. "Here the Constitution's work of organization ends," he said, "and the fact it attempts nothing more is its chief strength."

Wilson said that to include too many details in the Constitution

> . . .would be to lose elasticity and adaptability. The growth of the nation and the consequent development of the governmental system would snap asunder a constitution which could not adapt itself to the measure of the new conditions of our advancing society. If it could not stretch itself to the measure of the times, it must be thrown off and left behind, as a by-gone device; and there can be no question that our Constitution has proved lasting because of its simplicity. It is a cornerstone, and not a complete building; or, rather, to return to the old figure, it is a root, not a perfect vine.

A general framework for government, the Constitution must be interpreted as specific problems arise. For example, the Fourth Amendment to our Constitution protects people against "unreasonable searches and seizures" by police or other government officials. But what does "unreasonable searches and seizures" mean? The automobile did not exist in 1787 when the Constitution was written. Does the Fourth Amendment allow the police to stop you and search your car?

The Supreme Court often answers such questions. Decisions of the Supreme Court help to update the Constitution to reflect changing times and circumstances. Because our lawmakers constantly adapt the meaning of our Constitution to fit our current situation, we call that document a "living Constitution."

Decisions by judges who interpret and apply the Constitution to specific cases help to supply details needed to add substance to the general framework of government established by the Constitution. These judicial decisions formulate **constitutional law.**

Judicial interpretation of the meaning of general phrases in a constitution, such as "due process of law" or "interstate commerce," establishes constitutional law. In the United States, the Supreme Court plays a central role in developing constitutional law. In 1982, for instance, the Court decided that the Fourth Amendment ban against "unreasonable search and seizure" did not prevent police, under certain circumstances, from searching the contents of a car without a search warrant.

Statutes also provide details to supplement a constitution's general framework for government. Legislatures pass **statutory laws**; Congress and our fifty state legislatures pass thousands of these laws each year. In our system, federal and state laws cannot conflict with either the Constitution or the courts' interpretations of the meaning of the Constitution. The Constitution and the judicial decisions establishing the constitutional law are supreme.

EXERCISES FOR LESSON II-1

1. Franklin Roosevelt, 32nd President of the United States, said:

   Our Constitution is so simple and practical that it is possible always to meet extraordinary needs by changes in emphasis and arrangement without loss of essential form.

   —First Inaugural Address
   March 4, 1933

   a. Does President Roosevelt's statement support the view that the Constitution serves as a general framework for government? Explain.
   b. Does President Roosevelt's statement agree with President Wilson's preceding statement? Explain.
2. Read the four laws below. Which are examples of constitutional law? Why?
   a. The Federal Energy Department will make up to $100 million available for loans, grants, and other aid to encourage the development of systems to generate power from the wind. Is this an example of constitutional law? Explain.
   b. The Supreme Court ruled the Constitution did not give President Richard Nixon the authority to withhold evidence requested by a court for use in a criminal trial. Is this an example of constitutional law? Explain.
   c. A conviction for buying or selling over 1,000 pounds of marijuana now carries a maximum fine of $125,000 and a possible jail term of up to 15 years. Is this an example of constitutional law? Explain.
   d. A "gag order' limiting what the press could report about pre-trial proceedings in a mass murder case violated the First Amendment guarantee of a free press. Is this an example of constitutional law? Explain.

A Constitution Is a Legitimate Way to Grant and Limit the Power of Government Officials

A constitution delegates powers to various types of public officials who run different parts of the government. For example, Article I of the U.S. Constitution grants the Congress certain law-making powers. (See Article I, Section 8, for a list of powers granted to Congress.)

The Constitution also specifies certain powers that the Congress may not exercise. According to Article I, Section 9, of the Constitution, Congress may not take money "from the treasury, but in consequence of appropriations made by law. . . ."

Amendment I limits the power of Congress: "Congress shall make no law. . .abridging the freedom of speech, or of the press. . . ."

Several other sections of the Constitution assign duties and powers to the public officials heading different branches of the government. Its articles also place limits on the powers of officials such as the President, Supreme Court justices, and members of Congress.

The President can dispatch military forces to put down civil disorder or rebellion or to enforce federal laws if necessary. The government has the power to tax people and to spend the revenues it collects to maintain itself. These and other powers granted to the government can be found in the Constitution. (See Article I, Section 8; Article II, Section 2; and Article III, Section 2.)

However, limitations on the expressed powers granted to the government protect the liberties of the people. For example, while the U.S. Treasury Department collects taxes, an act of Congress must approve any expenditure of that tax money. The people, of course, choose representatives to Congress in public elections. The first ten amendments, known collectively as the Bill of Rights, protect liberties of the people.

All government officials must follow the Constitution when carrying out their duties. The President has to obey the Constitution and federal laws made under it. For example, the President may not require all employees of the executive branch of government to attend church services on Sundays in order to keep their jobs. The Constitution says that "no religious test shall ever be required as a qualification to any office of public trust in the United States." (See Article VI.)

The U.S. Constitution grants powers in the name of the people. The government draws its power from the consent of the governed. The document assumes government officials will use their powers in the interests of the people. For example, the Preamble to the U.S. Constitution says:

"We the People of the United States...do ordain and establish this Constitution for the United States of America."

Representatives of the people, selected to act in the name of the people, wrote and approved the Constitution of the United States. Granting certain powers to government in the name of the people gives legitimacy to the government. Because such a legitimate delegation of powers seems justified or right, most of the people, viewing it as legal and proper, are likely to find it acceptable.

EXERCISES FOR LESSON II-1

1. Alexander Hamilton wrote in *The Federalist* (#52) that, "The House of Representatives should have an immediate dependence on and an intimate sympathy with the people. Frequent elections are unquestionably the only policy by which this dependence and sympathy can be effectively secured."
   How does Hamilton's statement relate to the concept of granting legitimate power to a government?
2. Article V of the U.S. Constitution says: "Amendments to this Constitution...shall be valid...when ratified by the legislatures of three-fourths of the several States. . . ."
   What does the preceding statement indicate about granting legitimate power to the government?
3. People in the United States enjoy certain freedoms and rights, civil liberties, which are protected by law. Certain guarantees of civil liberties appear in the main body of the Constitution. For example, Section 9 of Article I lists a number of actions Congress may not take, such as suspending the privilege of the *writ of habeas corpus* which prevents authorities from holding someone in jail whom they have not charged with a crime.
   Does the preceding paragraph discuss legitimate limits on the power of government? Explain.

What is Constitutional Government?

Nearly all countries of the world possess written constitutions. Yet not all have constitutional government. Only where a constitution clearly places recognized and widely accepted limits on the powers of those who govern does constitutional government fully exist. Thus, constitutional government means limited government regulated by the rule of law.

The United States, Canada, and France practice constitutional government. The constitutions in those countries spell out limits on the powers of government that actually apply in daily political life. In these countries, the rule of law applies. That is, the government and its officials are subordinate to, *not superior* to, the constitution and other laws. The leaders of the government must follow the laws as other citizens do. Not even a president or prime minister can ignore a constitution. Constitutional government provides for the legal and orderly removal of a president or prime minister who disregards the law.

Although the Soviet Union has a written constitution, it does not operate under a system of constitutional government as this idea is understood in the United States. First, the Soviet Constitution differs greatly from ours. Placing a heavy emphasis on the role of the state and the rights of society, it discusses and outlines economic goals and rights not mentioned in the U.S. Constitution. Unqualified safequards do not protect the freedoms and rights of individuals: "Enjoyment by citizens of their rights and freedoms must not be to the detriment of the interests of society or the state, or infringe the rights of other citizens." (Article 39) The Soviet Constitution guarantees freedom of speech (Article 50) "in order to strengthen and develop the socialist system." By contrast, the U.S. Constitution establishes the supremacy of law to protect the individual.

The U.S. Constitution strives to place restraints on government through a system of checks and balances and judicial review; the Soviet Constitution provides a framework which allows government broad power to act for the development of society. For example, the Soviet Constitution establishes state ownership of the 'means of production' (the nation's capital, land, industry, and resources). This fundamental difference between the two constitutions reflects differing perspectives on the proper role and purpose of national government.

Neither constitution defines the role of political parties in the political system. In the Soviet case, the Communist Party of the Soviet Union (CPSU) plays an independent and central role in the administration of the Soviet state and society. The CPSU is an organization to which most government officials belong and which exercises a guiding and supervisory role throughout the whole of Soviet society. The constitution of the Soviet Union does not effectively limit the power of the Communist Party to make political decisions in government. The Communist Party leaders, for example, may decide to deprive individuals of free speech or other civil liberties on behalf of Party interests. Thus, the civil liberties of individuals are not fully guaranteed by the constitution of the USSR.

An effective constitutional government should be neither too powerful nor too weak. The government should have all powers necessary to perform tasks the people expect it to; at the same time, the constitution should place limits on the government's use of its powers to protect the liberties of the people.

In 1861, at the start of the Civil War, President Abraham Lincoln asked a critical question about the relationship between government and liberty. He said: "Must a government, of necessity, be too strong for the liberties of its own people, or too weak to maintain its own existence?"

Although a government with too much power may successfully enforce laws and keep order, is may also abuse the rights of citizens. By contrast, a government with too little power may not be able to protect the security, safety, or rights of citizens; moreover, it may not be able to survive.

Lincoln believed that while a government should be strong enough to enforce laws and keep order, sufficient restraints on government should protect the rights of citizens. Lincoln favored constitutional government, a system in which laws limit the power of rulers. Leaders and officials of a constitutional government must perform their duties in accordance with laws accepted by those whom they rule.

EXERCISES FOR LESSON II-1

1. Which of the following items are examples of constitutional government? Mark an "X" in the spaces next to each correct item. Be prepared to explain your answers.

    ____ a. The police can't enter your house to look for stolen property without a warrant.

    ____ b. Arrested five years ago, John Doe was never charged with a crime. Last week, the authorities finally released him from prison.

    ____ c. Citizens ought to be able to choose which laws they'll obey and which ones they'll ignore.

    ____ d. The majority of citizens ought to be able to vote to take away the rights of minority groups. After all, government by people should mean government by the unrestrained majority.

    ____ e. People have a legitimate right to criticize the President and other leaders of the government.

2. James Madison wrote about **constitutional government** in *The Federalist* (#51). Madison said:

    "In framing a government which is to be administered by men over men, the great difficulty lies in this: you must first enable the government to control the governed; and in the next place oblige it to control itself. A dependence on the people is, no doubt, the primary control on the government; but experience has taught mankind the necessity of auxiliary precautions."

    Does Madison agree with Abraham Lincoln's views (above) about an effective constitutional government? Explain. Do you agree with Madison? Why?

Reviewing and Applying Knowledge About the Idea of a Constitution

1. Which of the following are examples of constitutional law? Mark an "X" in the space next to each correct item. Be prepared to explain your answers.

    ____ a. The City Council of Zenith City passed an ordinance (law) banning smoking in public buildings.

    ____ b. The U.S. Supreme Court decided in 1982 that the children of people who entered the country illegally had the right to attend public schools. The Court based this decision on its interpretation of the "equal protection of the laws" clause of the Fourteenth Amendment to the U.S. Constitution.

    ____ c. The President has the power to veto bills passed by majorities of both Houses of Congress.

    ____ d. The New York State legislature passed a law granting several million dollars to the state universities to construct new buildings.

2. Which of the following are examples of constitutional government? Mark an "X" in the space next to each correct item. Be prepared to explain your answers.

    ____ a. King Louis XIV of France said that he ruled by "Divine Right." According to King Louis XIV, only God could limit his power as a ruler.

    ____ b. In Czechoslovakia, there is a fine written constitution that guarantees government by the people. There is a bill of rights that protects free speech. However, the top leaders of the Communist Party make all the important decisions, even though some of them do not hold a government office. People who want to get ahead do not speak out to criticize the Communist Party.

____ c. In the United Kingdom of Great Britain, laws are made according to a majority of members in a national parliament. Laws are enforced by a Prime Minister, who is the leader of the party with most members in the parliament. Voters elect the members of parliament, including the Prime Minister.

3. The U.S. Constitution provides for "a government of laws, not of men." Does this exemplify constitutional government? Explain.
4. Although the Soviet Union possesses a written constitution, its government does not function like a Western constitutional government. Discuss the features of Soviet government which distinguish it.
5. Justice Felix Frankfurter said: "The meaning of 'due process' and the content of terms like 'liberty' are not revealed by the Constitution. It is the justices who make the meaning."
   a. Would Frankfurter see the Constitution as an all-inclusive blueprint or as a general framework for government? Explain.
   b. Is Frankfurter describing the making of constitutional law or statutory law? Explain.
6. Give one example from material in this lesson that illustrates each of these characteristics of a constitution:
   a. the supreme law of a land;
   b. a framework for government;
   c. a legitimate way to grant and limit powers of government officials.

II-2. ANATOMY OF CONSTITUTIONS

LESSON PLAN AND NOTES FOR TEACHERS

Preview of Main Points

This lesson uses examples from foreign (Soviet, French, and German) constitutions and the U.S. Constitution to teach the basic structural features of constitutions. In each section of the lesson, students use concepts about constitutional structure to identify key parts of the U.S. Constitution. Students are also given the opportunity to think about how the structure of our Constitution is like other constitutions and how it is different.

Connection to Textbooks

This lesson provides a more in-depth instruction about the meaning and organization of constitutions than is available in textbooks. It also contains comparative material on foreign constitutions that can enrich textbook treatments focusing solely on the U.S. Constitution.

Objectives

Students are expected to:

1. Identify the purposes served by preambles to constitutions.
2. Identify the major structural features and organizing devices used in constitutions.
3. Use the concepts of Articles and Sections to locate key parts of the U.S. Constitution.
4. Know that constitutions contain procedures for amendment.
5. Use information in tables to compare the organization of the U.S. Constitution with foreign constitutions.

Suggestions for Teaching the Lesson

Opening the Lesson

- You might begin by asking students what the United States, Chile, India, France, Germany, and the Soviet Union have in common. Answer: each nation has a written constitution.
- Explain that the purpose of this lesson is to help students learn more about our Constitution by looking at how all constitutions are put together—at the anatomy of constitutions.

Developing the Lesson

- Distribute copies of the lesson—"Anatomy of Constitutions"—to students. Instruct them to read the material and complete the questions in the spaces provided. You may wish to have students stop at the end of each section of the lesson to discuss their responses to the questions, or they may work straight through all the material.

Concluding the Lesson

- Distribute copies of tables 1 and 2 to each student or display the tables with an overhead or opaque projector.
- Have students use information in the tables to answer the questions in the "Lesson Checkup." Conduct a class discussion which gives students an opportunity to review their responses to the material.

Suggested Reading

Finer, Samuel Edward. *Five Constitutions: Contrasts and Comparisons.* New York: Penguin Books, 1979. 346 pages, paperback. This paperback presents the full text of the constitutions of the U.S., the USSR (1936 and 1977 versions), the Federal Republic of Germany, and the Fifth French Republic. The author discusses in clear language how and why to study a constitution. He presents a clear system for comparing the provisions of each constitution. An excellent reference for the teacher, the book is also readily usable by students doing additional research on the U.S. and foreign constitutions.

II-2. ANATOMY OF CONSTITUTIONS

Today most of the world's nations have written constitutions. The U.S. Constitution is one of these.

Each nation's constitution outlines its plan for government. How are constitutions put together? What basic sections make up a constitution? How does ours compare to the others?

Statement of Goals

Nearly all constitutions have introductions. A constitutional introduction is often called a **preamble.** A preamble sets forth goals and purposes for the government described in the constitution. Here are some examples.

- The 1977 Constitution of the Soviet Union proclaims: "The supreme goal of the Soviet state is the building of a classless society."
- The Constitution of France says: "The French people solemnly proclaims its attachment to the Rights of Man."

A preamble may also describe the source of a government's authority. The German Constitution states that, "The German people. . . have enacted, by virtue of their constitutional power, this Basic Law for the Federal Republic of Germany."

EXERCISES FOR LESSON II-2

Answer these questions.

1. What purpose does a preamble serve? ________
____
____

2. Read the Preamble to the U.S. Constitution. The Preamble names ____________________ as the source of our government's authority.

3. List the six purposes of American government as defined in the Preamble to our Constitution.

   1. ________________________________
   ____
   2. ________________________________
   ____
   3. ________________________________
   ____
   4. ________________________________
   ____
   5. ________________________________
   ____
   6. ________________________________
   ____

Framework of Government

The text of a constitution spells out the basic plan for a nation's government. In a federal system like ours the body of the constitution may also describe how the national government relates to regional, local, or municipal levels of government.

The key building blocks used in structuring a constitution are often called articles. An article defines the specific features or attributes of a government. The French Constitution has 92 articles, including the two listed below.

Article 6. The President of the Republic shall be elected for seven years by direct universal suffrage [vote].

Article 24. Parliament consists of a National Assembly and the Senate.

The Deputies of the National Assembly shall be elected by direct suffrage [vote].

The Senate shall be elected by indirect suffrage.

Articles are usually grouped under some type of organizers. These are often called "chapters" or "titles." Organizers separate major parts of a constitution.

The 92 articles of the French Constitution, for example, make up 15 "titles." The titles cover such topics as:

Title II. The President of the Republic (contains 15 articles).

Title IV. The Parliament (contains 10 articles).

The Soviet Constitution has 174 articles divided into 21 chapters. The German Constitution has 182 articles organized into 12 chapters.

In the U.S. Constitution, the key building blocks are sections. These sections function as articles do in other constitutions. Our Constitution has a total of 54 sections—21 are grouped under the seven organizational headings called "articles" and 33 are divided among the amendments to the Constitution.* Here are two examples of sections in the Constitution of the United States.

Section 1 (in Article I). All legislative powers herein granted shall be vested in a Congress of the United States.

---

*Some copies of the U.S. Constitution include more than 54 sections, as a result of editorial changes to the original copy. The engrossed copy of the Constitution in the National Archives has 21 sections in the seven Articles constituting the main body of the document. The original copies of the 26 amendments include 33 sections.

> **Section 3 (in Article III).** Treason against the United States shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort.

EXERCISES FOR LESSON II-2

Use a copy of our Constitution to answer these questions.

1. Match the topics listed in Column B with the correct article listed in Column A.

A		B
Article I	____	a. Judicial Branch
Article II	____	b. Provisions for Amendment
Article III	____	c. Legislative Branch
Article IV	____	d. National Supremacy
Article V	____	e. Relations of States
Article VI	____	f. Executive Branch
Article VII	____	g. Ratification of Constitution

2. Which article contains the greatest number of sections? ____________________

3. Look at the sections under Article II. Which section deals with the topic covered by Article 6 of the French Constitution? ____________

Changing a Constitution

Times change and so do constitutions. Most constitutions spell out procedures for how they can be changed legally or amended. Here is an example from the French Constitution.

> **Article 89.** The initiative for amending the Constitution shall pertain both to the President of the Republic, on the proposal of the Prime Minister, and to the members of Parliament.

EXERCISES FOR LESSON II-2

Article V describes how our Constitution can be amended. Read Article V and answer these questions.

1. Both Houses of Congress must propose any amendment which originates in Congress.
   TRUE FALSE

2. If a majority of the state legislatures all vote to introduce the same amendment, they may also propose an amendment.
   TRUE FALSE

3. The states must ratify all proposed amendments if they are to be attached to the Constitution.
   TRUE FALSE

Lesson Checkup

1. Table 1, on page 49, compares the organization of several other constitutions with the U.S. Constitution.

   a. Which two constitutions are the longest?

   ____

   Why? ____________________

   ____

   ____

   b. Which constitution is the shortest? ________

   ____

   c. What are the key building blocks of the U.S. Constitution called? ____________

   ____

2. Table 2, on page 49, lists the major organizers or titles of the French Constitution.

   a. Which Article of the U.S. Constitution appears to cover the same topic as Title II? ________

   ____

   b. Which Article of the U.S. Constitution corresponds to Title IV? ____________

   c. Which Article of the U.S. Constitution corresponds to Titles VII and VIII? ________

   d. Which Article of the U.S. Constitution corresponds to Title XIV? ____________

TABLE 1
The Structure of Constitutions

	CONSTITUTION			
KEY PARTS	United States	Soviet Union	France	Germany
ORGANIZER	7 Articles and 26 Amendments	21 Chapters	15 Titles	12 Chapters
KEY BUILDING BLOCKS	54 Sections	174 Articles	92 Articles	182 Articles

TABLE 2
The French Constitution

	PREAMBLE
Title I.	ON SOVEREIGNTY
II.	THE PRESIDENT OF THE REPUBLIC
III.	THE GOVERNMENT
IV.	THE PARLIAMENT
V.	RELATIONS BETWEEN PARLIAMENT AND THE GOVERNMENT
VI.	TREATIES AND INTERNATIONAL AGREEMENTS
VII.	THE CONSTITUTIONAL COUNCIL
VIII.	THE JUDICIARY
IX.	THE HIGH COURT OF JUSTICE
X.	THE ECONOMIC AND SOCIAL COUNCIL
XI.	TERRITORIAL UNITS
XII.	THE COMMUNITY
XIII.	AGREEMENTS OF ASSOCIATION
XIV.	AMENDMENTS
XV.	TEMPORARY PROVISIONS

II-3. STATE CONSTITUTIONS, 1776-1780

LESSON PLAN AND NOTES FOR TEACHERS

Preview of Main Points

This lesson treats the origins, purposes, and main features of the thirteen state constitutions of the revolutionary period. The Massachusetts Constitution of 1780 is highlighted.

Connection to Textbooks

State constitutions of the revolutionary era are discussed briefly, if at all, in most high school American history or government textbooks. Teachers wanting to stress this topic can use this lesson as a supplement to American history textbook chapters on the American Revolution. The lesson might also be used to enrich discussions of the meaning of constitutionalism in American government textbooks.

Objectives

Students are expected to:

1. Know about the origins of the thirteen state constitutions of the revolutionary period.
2. Explain the historical significance of the means used to draft and ratify the Massachusetts Constitution in 1780.
3. Identify main patterns of government established by the original state constitutions.
4. Identify main ideas in the Massachusetts Constitution of 1780.

Suggestions for Teaching the Lesson

Opening the Lesson

- Inform students of the main points of the lesson.
- Write these terms on the chalkboard: elections and voting, civil liberties, executive powers, legislative powers, judicial powers. Ask students to speculate about how the original state constitutions treated these aspects of government. Use this brief discussion as a way to focus the attention of students and to stimulate their curiosity about the rest of the lesson.
- Inform students that many of the main features of the original state constitutions became part of the U.S. Constitution in 1787.

Developing the Lesson

- Ask students to read the lesson.
- Assign items 1-5 in the section titled "Using Knowledge About State Constitutions, 1776-1780."
- Conduct a class discussion of items 1-5.

Concluding the Lesson

- Assign items 6-8 at the end of the lesson. Two of the items, 7 and 8, require students to interpret part of Article XXX and Article IV of the Massachusetts Constitution of 1780.
- Discuss items 6-8 with students. Emphasize the significance of Article IV, which was a typical declaration of states' rights that appeared in the state constitutions of the era. Point out that this view of states' rights was included in the Articles of Confederation. It was one of the issues that divided Federalists and Antifederalists during the arguments about ratification of the Constitution in 1787-1788.

ANSWERS TO ITEM 5

X a.
X b.
X c.
___ d.
___ e.

X f.
X g.
___ h.
X i.
X j.

II-3. STATE CONSTITUTIONS, 1776-1780

In 1776, the United States of America declared their freedom and independence. The Declaration of Independence said:

> Representatives of the United States of America, the General Congress, Assembled. . .solemnly publish and declare, That these United Colonies are, and of Right ought to be Free and Independent States. . .and that as Free and Independent States, they have full Power to levy War, conclude Peace, contract Alliances, establish Commerce, and to do all other Acts and Things which Independent States may of right do. . . .

Origins of State Constitutions

Between 1776 and 1787, eleven of the thirteen newly independent states wrote new constitutions. Some of them wrote more than one constitution in this period. Two states, Connecticut and Rhode Island, used their colonial charters of 1662 and 1663 as their constitutions; however, they deleted all references to the British government and the King. In addition, Vermont adopted a constitution in 1777.

The procedure of writing constitutions varied from state to state. In some states the regularly elected legislatures drafted and ratified constitutions like any other laws. In those states without regularly elected government (the Royal governors having disbanded their legislatures), the revolutionary congresses, conventions, or provisional governments wrote constitutions, and declared them to be the basis of new state governments. In Pennsylvania, for example, the people of the state elected the delegates to the state constitutional convention, but the Revolutionary committees, not the existing government, conducted the election.

With one exception, none of the new constitutions were submitted to the people for ratification. Usually the body that wrote the constitution (the legislature, revolutionary congress, convention, or provisional government) declared the new constitution the law of the land when it had finished drafting it.

Massachusetts was the exception. After the Boston Tea Party (1773), the British government passed the Massachusetts Government Act (1774), which stripped Massachusetts of its right to self-government as provided in the Colony's charter of 1691. In 1775, the Continental Congress authorized Massachusetts to organize a new government under the old charter of 1691. A legislature was soon elected. In 1776, the Massachusetts General Court (state legislature) wrote a constitution for the new state. No special convention met to write this document. In this way, the Massachusetts constitution resembled those of other states. However, the Massachusetts constitution differed from those of the other states in one critical respect.

In March, 1778, The Massachusetts legislature submitted the new constitution to the people of the state for ratification. For *the first time* in American history the people of a state voted for or against the document that would be the fundamental law of their state. Moreover, the legislature allowed *all* free adult males to vote on the constitution. No property requirements, religious tests, or racial restrictions excluded anyone from the electorate. However, the voters decisively rejected the new constitution. Only 2,083 men voted for it, while 9,972 opposed it.

Why the Massachusetts Constitution of 1778 Was Defeated

Voters rejected the constitution for several reasons: the qualifications for voting and representation; the lack of protection against tyranny; and the procedure for writing the constitution.

Voting and Representation. Voters throughout Massachusetts objected to the way the proposed constitution allocated seats in the house of representatives. Many towns in the state felt the proposed arrangement denied their rightful representation.

Voters also disliked the many restrictions on voting found in the proposed constitution. The constitution denied blacks and Indians the ballot, a provision that people in Massachusetts thought unfair. Hundreds of free blacks and former slaves from Massachusetts were fighting in the patriot armies at this time. Similarly, some Indians had joined the Revolutionary army. More importantly, Indians had lived as free members of Massachusetts society for over a century. It made no sense to the Massachusetts voters on the one hand to fight a war for "life, liberty, and the pursuit of happiness" and on the other to deny those rights to people on account of their race.

Finally, voters disliked the high property qualifications for voting included in the new constitution. Many citizens, especially in Boston and such growing towns as Cambridge, Salem, and Charlestown, did not own a great deal of property. It seemed unreasonable to deny them the ballot solely on that ground.

Lack of Protection Against Tyranny. People objected to the powers granted the governor under the proposed constitution, as well as to restrictions on voting. Their recent experience with King George III and the royal governors he had sent to rule Massachusetts convinced the people that power should not be concentrated in the hands of a single individual. Such a man might easily become a tyrant.

For similar reasons, people opposed the constitution because it lacked a declaration of rights. People believed that the constitution ought to spell out their rights clearly. They also wanted the limitations on the government clearly outlined. Otherwise a governor more interested in his own power than in the welfare of the people might threaten the rights of the people.

The Procedure for Writing the Constitution. Finally, many people complained about the procedure followed in writing the proposed constitution. The legislature, not a convention called for the purpose of writing a constitution, had written the constitution. Some of the most important and best qualified men in Massachusetts politics were not serving in the state legislature. For example, neither Samuel Adams nor his cousin John Adams, the state's experts in constitutional theory and political philosophy, had participated in writing the proposed constitution. As delegates to the Continental Congress they could not also serve in the state legislature. Other state leaders were serving in the continental armies. The voters believed (correctly as it turned out) that many important leaders who did not currently serve in the state legislature would willingly serve at a constitutional convention. A convention would thus attract the best men in the state, enabling the state to benefit from the talents of men like Samuel and John Adams.

Believing a constitution should be something more than a mere law, others objected to allowing the legislature to write the constitution. As early as 1776, representatives of the Town of Concord, expressed their sentiments in the Concord Resolutions. These Resolutions said:

> The Supreme Legislative. . . [is] by no means a body proper to form and establish a Constitution or form of government; for reasons following. First, because we conceive that a Constitution in its proper idea intends a system of principles established to secure the subject in the possession and enjoyment of their rights and privileges, against any encroachments of the governing part. Second, because the same body that forms a Constitution have of consequence a power to alter it. Third, because a Constitution alterable by the Supreme Legislative is no security at all to the subject against any encroachment of the governing part on any, or on all of their rights and privileges.

Massachusetts Tries Again—The Constitution of 1780

After the proposed constitution suffered defeat, the Massachusetts General Court asked the people of the state to decide in town meetings if they wanted to convene a constitutional convention. In April 1779, by a vote of 6,612 to 2,659, the voters of the state supported the proposal. The Massachusetts General Court acted swiftly, and on September 1, 1779 the world's first democratically elected constitutional convention met.

Both Samuel and John Adams attended, temporarily absenting themselves from the Continental Congress. The two famous cousins served on the drafting committee. John Adams singlehandedly wrote the Massachusetts Declaration of Rights, which the convention adopted with only minor changes. The addition of a Declaration of Rights represented only one of the many elements of the new constitution.

The people of Massachusetts ratified the new constitution by the requisite two-thirds majority in 1780.

The making of the Massachusetts Constitution of 1780 was a prime example of self-government and popular sovereignty. The government was framed by a convention that derived its authority directly from the people. Then the people ratified the constitution written by delegates that they had chosen in a convention that they had approved. Thus, the basic and supreme law of the state was made directly in the name of the state's people, who would be governed by it.

Main Elements of Government in the Massachusetts Constitution of 1780

What kind of government did the people of Massachusetts approve in 1780? Here are some of the main elements of the state's constitution.

1. **A Preamble set the main purposes of government.** It stated that the government was formed by the people to help them guard their civil rights and liberties—"to furnish the individuals who compose it [the people of the state] with the power of enjoying in safety and tranquility their natural rights. . . ."

   "[The Constitution] is a social compact, by which the whole people covenants with each citizen, and each citizen with the whole people, that all shall be governed by certain laws for the common good. . . ."

2. **The document divided the powers of government among three parts or branches:** (1) a legislature to make laws, (2) an executive department, headed by a governor, to carry out and enforce laws, and (3) a judicial department of law courts and judges to apply the law and to interpret the meaning of the law in cases brought before the state courts. **Article XXX** of the Massachusetts Constitution said:

"In the government of this commonwealth, the legislative department shall never exercise the executive and judicial powers,...: the executive shall never exercise the legislative and judicial powers,...: the judicial shall never exercise the legislative and executive powers,...: to the end it may be a government of law and not of men."

3. **The drafters included protections against the acquisition of too much power by one part or branch of government at the expense of the other parts.**
    - The legislature was bicameral (divided into two houses). A majority in both houses had to approve bills (proposed laws) for them to become laws. Thus, one house could check the other.
    - The governor could veto (reject) a bill passed by both houses of legislature. Thus, the governor could check the legislatures.
    - Two-thirds votes in both houses of the legislature could overturn a governor's veto. Thus, the legislature could check the governor.
    - Appointed by the governor, judges could stay in office for life, as long as they behaved properly. Thus, they could make decisions uninfluenced by pressure from the executive and legislative branches of government.
4. **The people (eligible voters) elected the governor and legislators for fixed terms of office.** Elected by eligible voters for the state, the governor and members of the state legislature served one-year terms of office.
    Article IX of the Massachusetts Constitution said: "All elections ought to be free; and all the inhabitants of this commonwealth, having such qualifications as they shall establish by their frame of government, have an equal right to elect officers, and to be elected for public employment."
    To be eligible for election to the positions of governor or state legislator, a person had to own property worth a certain amount of money.
    To be eligible to vote, a person had to be a taxpayer and property owner.
    Only male adults could vote and hold public office.
5. **The state could only tax people with the consent of elected representatives in government. Article XXIII** said: "No subsidy, charge, tax, impost, or duties ought to be established, fixed, laid, or levied, under any pretext whatsoever, without the consent of the people or their representatives in the legislature."
6. **The added bill of rights protected certain liberties and rights of the people.** It guaranteed the rights of the people to a free press. Likewise, guarding the rights of people accused of crimes, the constitution assured suspected criminals the right to trial by juries of their peers and the right to trial according to established legal procedures.
    Article I said: "All men are born free and equal, and have certain natural, essential and unalienable rights; among which may be reckoned the right of enjoying and defending their lives and liberties; that of acquiring, possessing, and protecting property; in fine, that of seeking and obtaining their safety and happiness."
    In the 1780s, the Massachusetts courts would interpret this clause to abolish all slavery in the state.
7. **The state government and people of Massachusetts were to retain all powers not specifically granted to the government of the United States.**
    Article IV said: "The people of this commonwealth have the sole and exclusive right of governing themselves, as a free, sovereign, and independent state; and do, and forever hereafter shall, exercise and enjoy every power, jurisdiction, and right, which is not, or may not hereafter be, by them expressly delegated to the United States of America, in Congress assembled."

Patterns of Government in the Original Thirteen States

How similar was the Massachusetts Constitution to the constitutions of the other states? Did the Massachusetts Constitution frame a state government very different from the governments established by the other state constitutions?

Several general statements about the state constitutions written between 1776 and 1780 appear below.

1. Eleven of the states had bicameral (two-house) legislatures. Majorities in both houses had to approve laws: two, Pennsylvania and Georgia, had unicameral (one-house) legislatures.
2. Ten of the thirteen states limited the governor's term to one year in order to control the chief executive's power. In no state did the governor's term exceed three years. In some states, the chief executive was called the "president" of the state.
3. In eight states, the state legislature elected the governor. In the five other states the eligible voters elected their governors.
4. In nine states, the governor had **no** power to veto acts of the legislature.
5. In eight states, judges were appointed for life on condition of good behavior.

6. In most states, a man had to own at least a minimal amount of property in order to run for the offices of legislator or governor. In a number of states, a candidate had to own more property to qualify for the state senate or the governorship than for the state house of representatives.
7. In every state, some economic qualification determined who would have the right to vote.

   In some states, one had to be a taxpayer, or a freeholder. In others, one had to own some minimum amount of property with a certain value. Racial qualifications varied from state to state. In New Hampshire, Massachusetts, New York, New Jersey, Pennsylvania, Maryland, and North Carolina, free blacks and Indians could vote if they met property qualifications. Slaves could not vote in any state. A clause of the 1776 New Jersey constitution gave the franchise to "all inhabitants. . .of full age, who [were] worth fifty pounds proclamation money" and who met a twelve months residency requirement. This clause allowed women, as well as free blacks, to vote in New Jersey. In 1807 New Jersey revoked this right, denying both women and free blacks the vote. No other state allowed women to vote at this time.
8. Most state constitutions included bills of rights, which guaranteed the peoples' freedoms and rights. These rights included freedom of the press, the right of people accused of crimes to a trial by jury and to judgment through established legal procedures, and freedom from unreasonable searches and seizure of property by government officials.

EXERCISES FOR LESSON II-3

Using Knowledge About State Constitutions, 1776-1780

1. Why were state constitutions written between 1776-1780?
2. How were most of the state constitutions written and ratified?
3. What was different about the way the Massachusetts Constitution of 1780 was written and ratified?
4. Review the Concord Resolutions of October 22, 1776. What arguments does this document present in support of the way the Massachusetts Constitution of 1780 was written and ratified?
5. Which of these statements about the state constitutions of 1776-1780 can you support with evidence drawn from this lesson? Place an "X" in the space next to each correct statement. Be prepared to explain your responses.

   ____ a. A minority of the adult free, male population in each state was eligible to hold the positions of governor or legislator.

   ____ b. The governor of Massachusetts had more power than the governors of most other states.

   ____ c. In most states, a majority in each of two houses of the legislatures had to support a proposed law for it to become law.

   ____ d. In most states, the qualified voters of the state elected the governor.

   ____ e. Only the Massachusetts constitution had a Bill of Rights.

   ____ f. The state constitution divided the powers of government in Massachusetts among three branches: legislative, executive, and judicial.

   ____ g. In Massachusetts, the governor could veto acts passed by the legislature.

   ____ h. The legislature in Massachusetts was unicameral.

   ____ i. Main purposes of the government in Massachusetts included protecting the safety, property rights, and civil liberties of the people.

   ____ j. In Massachusetts, people were expected to pay taxes that had been established by a majority vote of their representatives in the legislature.
6. How much did the government outlined by the Massachusetts Constitution of 1780 differ from the types of government established by the other state constitutions?
7. Article XXX of the Massachusetts Constitution of 1780 said that the state should have "a government of laws and not of men."
   a. What does this statement mean?
   b. Why is this idea important to people who want to enjoy freedom and justice under their government?
8. Article IV of the Massachusetts Constitution of 1780 pertains to the rights and powers of the state government. Review Article IV.
   a. What is the main idea of Article IV?
   b. What might have motivated the drafters to include Article IV in the Constitution of 1780?
   c. Would Article IV be likely to contribute to or detract from the power and authority of the central government of the United States of America? Explain.

TABLE 1

Creation of the New State Governments

July 19, 1775

The first formally elected revolutionary state government, the **Massachusetts** house of representatives, meets.

January 5, 1776

The **New Hampshire** legislature ratifies a constitution for the state, the first state constitution to go into effect.

March 25, 1776

The **South Carolina** provisional congress passes a provisional constitution to operate until the end of the war with Great Britain.

May 4, 1776

The **Rhode Island** general assembly resolves that the colonial charter remains in force but deletes all references to the King.

June 29, 1776

The **Virginia** provincial assembly passes a new constitution which includes the Virginia Declaration of Rights. Patrick Henry is immediately elected governor of the now independent state of Virgina.

July 2, 1776

The **New Jersey** provisional congress passes a new constitution which goes into effect immediately.

July 4, 1776

The **Continental Congress** adopts the Declaration of Independence.

July 8, 1776

Pennsylvania revolutionary leaders hold a state-wide election to choose delegates to a constitutional convention, the first convention called for the specific purpose of drafting a state constitution. It will serve as a model for the Constitutional Convention of 1787.

September 21, 1776

The **Delaware** constitutional convention completes its work and immediately ratifies its new constitution. Delegates then disband to allow for elections under the new constitution. The first constitutional convention completes a constitution.

September 28, 1776

The **Pennsylvania** constitutional convention finishes its work and declares the new constitution in effect.

October, 1776

Connecticut declares its colonial charter to be in force, but deletes all references to the King.

November 8, 1776

A special congress elected for the purpose of writing such a document drafts and ratifies the **Maryland** constitution. This congress stays in power as the new legislature of the state.

December 18, 1776

A special state congress writes the **North Carolina** constitution and puts it into operation.

February 5, 1777

The **Georgia** constitution, written by the state's provisional congress, goes into effect.

April 20, 1777

The **New York** provisional congress adopts the constitution it wrote. The congress rejects demands for popular ratification of this constitution because British military forces still occupy New York City and other areas of the state.

July 8, 1777

The **Vermont** revolutionary convention writes a constitution, declares it in force immediately, and asserts that Vermont is an independent state. All its neighbors will not recognize Vermont until 1790.

March 19, 1778

The **South Carolina** general assembly writes a new constitution for the state, voting it into effect as if it were an ordinary law. South Carolina becomes the first state to rewrite its constitution during this period.

March, 1778

The state legislature submits the **Massachusetts** constitution to voters in the state. For the first time a constitution is submitted to the people for ratification. By a rate of 9,972 to 2,083 the people reject the constitution.

September 1, 1779

The **Massachusetts** constitutional convention meets in Cambridge. For the first time a convention convenes that was created by a legislature, elected by the people, and brought together for the sole purpose of writing a constitution.

October 25, 1780

The requisite two-thirds of the people ratify the **Massachusetts** constitution and it goes into effect.

June 2, 1784

New Hampshire adopts a new constitution drafted by a convention specifically called for that purpose and ratified by the people at their town meetings.

II-4. THE ARTICLES OF CONFEDERATION (FIRST CONSTITUTION OF THE UNITED STATES)

LESSON PLAN AND NOTES FOR TEACHERS

Preview of Main Points

This lesson describes briefly the origins and purposes of the Articles of Confederation, the first constitution of the United States of America. The major emphasis, however, is on the main features of the thirteen articles as a plan for government.

Connection to Textbooks

All high school textbooks in American history and government include sections about government under the Articles of Confederation, which can be supplemented with the information, ideas, and activities of this lesson. This lesson provides opportunities to elaborate upon the content of textbook chapters. Furthermore, the activities and questions at the end of the lesson challenge students to apply ideas and information about the Articles of Confederation.

Objectives

Students are expected to:

1. Explain the origins and main purposes of the Articles of Confederation.
2. Demonstrate knowledge of main features of the Articles of Confederation.
3. Practice skills in locating, comprehending, and interpreting ideas and information in a document, the Articles of Confederation.
4. Identify and explain weaknesses of the Articles of Confederation as a plan for government of the United States.

Suggestions for Teaching the Lesson

Opening the Lesson

- Inform students of the main points of the lesson.
- Ask students to tell what they know about the Articles of Confederation. Ask them these questions: (1) What is it? (2) Why was it created? (3) What were its main features? (4) Why did it have these characteristics? Tell students that this lesson presents information that pertains to the preceding questions.

Developing the Lesson

- Ask students to read the sections of this lesson about the origins and purposes of the Articles of Confederation and main features of the articles.
- Assign the activities and questions at the end of the lesson, items 1-6.

Concluding the Lesson

- Assign item 7 at the end of the lesson.
- Divide the class into small groups of from 5-7 students. Ask each group to complete the three parts of item 7 and to be prepared to report responses to the class.
- Call on members of different groups to report their responses to 7a, 7b, and 7c. Ask other students to listen carefully and to either agree or disagree with the reports.

Suggested Reading

Jensen, Merrill. *The Articles of Confederation*. Madison: The University of Wisconsin Press, 1940.

Pleasant, Samuel A. *The Articles of Confederation*. Columbus, Ohio: Charles E. Merrill Publishing Company, 1968.

ANSWER SHEET, ITEMS 1 AND 2

1. a. False
   b. True
   c. False
   d. True
   e. False
   f. True
   g. False
   h. False
   i. False
   j. True

2. a. YES, Article VIII
   b. YES, Article IX
   c. YES, Articles IX and X
   d. YES, Article IX
   e. NO, Article V
   f. NO, Articles IX and II
   g. YES, Article IX
   h. NO, Article XIII
   i. YES, Article XIII
   j. YES, Article II
   k. YES, Article VI
   l. NO, Article II

II-4. THE ARTICLES OF CONFEDERATION (FIRST CONSTITUTION OF THE UNITED STATES)

In 1781, the thirteen states adopted Articles of Confederation. The Articles served as the constitution for the national government until 1788. This written plan for government included a preamble and thirteen articles, or main sections.

Origins and Purposes of the Articles of Confederation

Thirteen American states, which had been British colonies, declared their independence in 1776. The Second Continental Congress served as the temporary national government of these thirteen states.

Representatives from each of the thirteen colonies had formed the First Continental Congress in 1774 in order to register formal protests against the British government. The Second Continental Congress convened in May of 1775, after the outbreak of fighting between the Americans and British. This group of representatives from each colony issued the Declaration of Independence in 1776. The Second Continental Congress also conducted the War of Independence.

In 1776, the Second Continental Congress appointed a committee to draft a plan of government for the thirteen American states. That committee, headed by John Dickinson of Delaware, wrote the Articles of Confederation. The Continental Congress adopted the articles in 1777 and then submitted them to the states. The articles required that every state ratify (approve) them before they could have the force of law. In March 1781, the last of the thirteen states, Maryland, ratified the articles. The new country—the United States of America—now had a framework for government.

The Articles of Confederation established the union of the thirteen American states. The preamble stated that **the thirteen states** "agree to certain articles of confederation and perpetual union."

The preamble indicated that the confederation created by these articles would be a union of equal states, which would last forever. The states saw the union as a defensive alliance of thirteen separate states designed to protect against possible foreign interference. They did not view the Articles as the vehicle for the creation of a new nation-state made up of the formerly independent states. Under the articles, the thirteen states remained sovereign.

Leaders of the thirteen states remained unwilling to grant very much power to a central government. Memories of the causes of the rebellion against the British government were strong. They prevented the creation of a powerful new central government which people feared might infringe upon their civil liberties and rights.

Main Features of Government Under the Articles of Confederation

Article I said that the name of the confederation "shall be 'The United States of America'."

Article II consisted of a strong statement of states' rights. It said: "Each state retains its sovereignty, freedom and independence, and every Power, Jurisdiction and right, which is not by this confederation expressly delegated to the United States, in Congress assembled."

This statement left the central government only those few powers specifically listed in the Articles of Confederation. All other powers of government belonged to the states. States retained their sovereignty, as each conserved the power to govern affairs within its territory without interference from the central government.

Article III declared the Confederation a "firm league of friendship" to provide for the common defense and general welfare of the state belonging to it.

Article IV required each state to recognize and respect the judicial proceedings and public records of the other states in the Confederation. It also provided the people of each state with an unrestricted right to travel in the states of the Confederation.

Article V established a "Congress" as the basic institution of the central government. Each state could freely decide how to select its representatives to Congress who would serve one-year terms of office. The articles allowed each state to send from two to seven representatives to Congress, and each state paid its own delegates. However, regardless of the size of a state's delegation, each state had only *one vote* in the Congress. Thus, a small state like Delaware had voting power equal to that of a large state like Pennsylvania.

Article VI included several limitations upon the states. For example, no state was permitted—"without the Consent of the united states in congress assembled"—to:

- exchange ambassadors with other nations.
- make treaties or alliances with other states or nations.
- impose taxes on imports that would violate treaties made by the "united states in congress assembled" and a foreign power.
- maintain vessels of war.
- go to war.

This article required each state to "always keep up a well regulated and disciplined militia, sufficiently armed and accoutered. . . ."

Article VII set forth rules for the appointment of military officers and the raising of armed forces within the states. It gave the states the right to name officers under the rank of colonel.

Article VIII provided that a "common treasury" to be "supplied by the several states" would finance the costs of war or other expenses having to do with the "general welfare, and allowed by the united states in congress assembled." The states were to send money collected in taxes from the people of each state to the "common treasury." However, the articles gave the central government no authority to force the states to give money for the "common treasury."

Article IX specified the "sole and exclusive" powers of Congress. It granted the Congress certain powers and denied it all others. Each state would exercise other powers of government within its own boundaries. Congress had power only to:

- declare war and make peace.
- exchange ambassadors with foreign powers.
- make treaties and alliances with foreign powers.
- arbitrate certain kinds of disputes between two or more states.
- settle boundaries of the states.
- settle land ownership disputes between two states.
- regulate the value of money.
- borrow money.
- establish a postal system.
- manage relationships with Indian nations.
- regulate weights and measures.
- maintain a navy and an army requested from the states.
- appoint executive committees or departments to manage the affairs of the United States under the direction of Congress (Departments of War, Finance, and Foreign Affairs the national government established, as well as the office of Post Master General).
- appoint one member of Congress to serve as a President, or presiding officer, at the meetings of Congress (This person could serve for a term of one year and had power only to manage the meetings of Congress).

Thus, Article IX gave Congress few powers. These few powers were further limited by the provision that certain important powers could be carried out only after approved by nine of the thirteen states. Other actions required a majority vote (seven) of the thirteen states.

Article IX stated that "The united states in congress assembled shall never engage in a war, nor grant letters of marque and reprisal in time of peace, nor enter into any treaties or alliances, nor coin money, nor regulate the value thereof, nor ascertain the sums and expenses necessary for the defence and welfare of the united states, or any of them, nor emit bills, nor borrow money on the credit of the united states, nor appropriate money, nor agree upon the number of vessels of war, to be built or purchased, or the number of land or sea forces to be raised, nor appoint a commander in chief of the army or navy unless nine states assent to the same, nor shall a question on any other point, except for adjourning from day to day be determined, unless by the votes of a majority of the united states in congress assembled."

Article X provided for a "committee of the states" to carry out the duties of Congress whenever Congress was not in session. The "committee of the states" consisted of one delegate from each state. The "committee of the states" could take actions only with the approval of nine states.

Article XI said that the British colonies in Canada could join the Confederation as equal members. No other colony could join the Confederation "unless such admission be agreed to by nine States."

Article XII pledged that the United States would take responsibility for the debts the Continental Congress had incurred before the establishment of the Confederation.

Article XIII required every state to obey the decisions of Congress "on all questions which by this confederation are submitted to them." No state of the union could violate the Articles of Confederation. Furthermore, amendments to the Articles of Confederation required the support of every state legislature to become binding.

EXERCISES FOR LESSON II-4

Reviewing and Interpreting the Articles of Confederation

1. Identify the correct statements in the following list. Be prepared to explain your answers. Place a check mark in the space next to each correct statement.

____ a. The Articles of Confederation declared the independence of the United States of America from Great Britain.

____ b. The Articles of Confederation did not take effect until the thirteen states ratified them.

____ c. The states ratified the Articles of Confederation in 1777.

____ d. The Articles of Confederation established terms under which thirteen separate states would become the United States of America.

____ e. Delegates who directly represented the American people created the Confederation.

____ f. Members of the Second Continental Congress proposed and wrote the Articles of Confederation.

____ g. The Articles of Confederation included a preamble, thirteen articles, and a bill of rights.

____ h. By ratifying the Articles of Confederation, the governments of the thirteen states gave up most of their powers.

____ i. The United States government included a Congress, which was to make laws, and a Chief Executive, who was to enforce laws within the thirteen states.

____ j. Americans wanted to limit the powers of their central government as a result of their recent experiences with the British government.

2. Read each of the following statements. Decide whether or not each statement describes an aspect of government under the Articles of Confederation. If so, answer YES. If not, answer NO. Circle the correct answer under each statement.

   Identify the number of the article or articles that support(s) your answer. Write this information in the appropriate blank below each item.

   a. Congress could ask the states to supply money to pay its expenses, but could not force the states to pay.
      YES NO Article # ____

   b. Congress had power to declare war, but could only do so if nine states agreed.
      YES NO Article # ____

   c. The "committee of the states" conducted the business of the United States government during periods when Congress was not meeting.
      YES NO Article # ____

   d. The Congress could establish executive committees and departments to manage U.S. government business.
      YES NO Article # ____

   e. The states with large populations had more representatives and votes in Congress than did states with smaller populations.
      YES NO Article # ____

   f. Congress could expand its powers if necessary to deal with a serious problem confronting the United States.
      YES NO Article # ____

   g. Five of the thirteen states could stop the United States government from making a treaty even if the other eight states favored it.
      YES NO Article # ____

   h. An amendment could be made to the Articles of Confederation only if two-thirds of the states agreed to it.
      YES NO Article # ____

   i. The document supposedly bound every state to obey decisions of Congess made in agreement with the Articles of Confederation, but the government had no authority to force a state to obey.
      YES NO Article # ____

   j. All the states were supposed to cooperate to resist attacks against any one of them.
      YES NO Article # ____

   k. No state could make a treaty with a foreign power without the consent of Congress.
      YES NO Article # ____

   l. Congress retained every power not granted specifically to the states.
      YES NO Article # ____

3. Why did Congress have so much trouble passing laws under the terms of the Articles of Confederation?

4. Why was it difficult or impossible for the government of the United States to enforce laws under the terms of the Articles of Confederation.?

5. Why was it difficult or impossible for the government of the United States, under the Articles of Confederation, to raise money to pay its expenses?

6. Why was it difficult or impossible for the government of the United States, under the Articles of Confederation, to settle disputes between the states or between citizens of different states?

7. (a) List three important weaknesses of the Articles of Confederation as an effective plan for government of the United States?

   (b) Which of these weaknesses proved most significant in causing the failure of government under the Articles of Confederation?

   (c) What amendments might the states have added to the articles to make this plan for government more effective? Prepare at least three amendments and explain how they might have remedied defects in the Articles of Confederation.

II-5. OPINIONS ABOUT GOVERNMENT UNDER THE ARTICLES OF CONFEDERATION

LESSON PLAN AND NOTES FOR TEACHERS

Preview of Main Points

This lesson is a collection of documents or primary sources that refer to government under the Articles of Confederation. Each document includes evidence of different views of Americans about the government of the United States. The documents also contain evidence about events that pertain to the convening of the Constitutional Convention in 1787. Students are asked to use evidence in the documents to complete activities and answer questions about the government under the Articles of Confederation and the steps that led to the Constitutional Convention.

Connection to Textbooks

This lesson can be linked to sections of American history and government textbooks that discuss government under the Articles of Confederation and events that influenced the convening of the Constitutional Convention in 1787. The lesson might be used as a "springboard" into relevant textbook content; that is, students can examine and discuss the documents as a preface to their study of related material in the textbook. Another use of this lesson is as a culminating activity; after students have read about weaknesses of the Articles of Confederation in the textbook, they can apply and extend their knowledge through their analyses of these documents.

Objectives

Students are expected to:

1. Use evidence in documents to arrange events in chronological order.
2. Use evidence in documents to support or reject statements about government under the Articles of Confederation and the convening of the Constitutional Convention.
3. Suspend judgment about the truth or falsity of statements on the grounds of insufficient evidence.
4. Use evidence to discuss tentatively interpretations of ideas and events about government under the Articles of Confederation and the convening of the Constitutional Convention.

Suggestions for Teaching the Lesson

Opening the Lesson

- Inform students of the purpose of the lesson.
- Have them read the introduction to the lesson and Document 1.
- Discuss Document 1 with students. Guide the students in their interpretation of the document. Discuss the two questions at the beginning of the document. Solicit and answer questions about how to approach interpretation of a document or primary source.

Developing the Lesson

- Ask students to read all of the documents in this lesson. Tell them to use the questions that precede each document as guides to their reading and interpretation of the documents.
- Conduct a class discussion in which you examine with students each document in the lesson. Move through the documents, one by one, and discuss the questions that precede each document. Raise and discuss other questions about the document that seem interesting to you and your students. Help the students to comprehend the main ideas in each document.

Concluding the Lesson

- Have students complete activities 1 and 2 at the end of the lesson. Discuss answers with them.
- Have students discuss responses to the questions in items 3 and 4 at the end of the lesson.
- You might wish to have students write an essay, based on evidence in the documents, in response to one or more of the questions in item 3.

Suggested Reading

Flexner, James Thomas. *George Washington and the New Nation, 1783-1793.* Boston: Little, Brown and Company, 1970. One of a four-volume set on the life of Washington, the book discusses his criticisms of the Articles of Confederation and leadership at the Constitutional Convention.

Sanderlen, George. *A Hoop to the Barrel: The Making of the American Constitution.* New York: Coward, McCann and Geoghegan, Inc., 1974, 8-44. The first part of this book is about events preceding the Constitutional Convention. It includes edited primary sources. This book is designed for use by high school students.

ANSWER SHEET, ITEMS 1 AND 2 AT THE END OF THE LESSON

1. 1. F
   2. F
   3. C
   4. G
   5. G
   6. E
   7. E

2. a. O
   b. O
   c.
   d. O
   e. X
   f. X

II-5. OPINIONS ABOUT GOVERNMENT UNDER THE ARTICLES OF CONFEDERATION

Representatives of the United States and Great Britain signed the Treaty of Paris on September 3, 1783. This act officially ended the American War for Independence. The Treaty confirmed the independence of the United States of America, and established the boundaries of the new nation.

All thirteen states ratified the Articles of Confederation by March 1, 1781. These articles served as the basic charter for the government of the new United States from 1781 until 1788, when the new constitution was ratified.

Many Americans were very pleased with the system of government created by the Articles of Confederation. Others believed that the articles contained many flaws, and they warned Americans about the need to revise or replace them.

Following are **excerpts** from the writings of some American leaders during the period from 1783-1787. These writings reveal important opinions about the government under the Articles of Confederation. The excerpts from these documents also contain evidence about events associated with the convening of the Constitutional Convention in 1787.

As you read the following documents, think about these questions.

1. What views are expressed about the strengths or weaknesses of government under the Articles of Confederation?
2. What are the main similarities and differences in the following ideas about government?

Document 1: A Warning About the Need to Strengthen the Government of the United States

George Washington, the great general and hero of the American Revolution, wrote a letter in 1783 that he sent to each of the thirteen state governments. He believed that the government under the Articles of Confederation might prove too weak to hold the nation together.

1. What warning did Washington send to the American people?
2. According to Washington, how could Americans avoid the problems described in his warning?

There are four things, which I humbly conceive, are essential to the well being, I may even venture to say, to the existence of the United States as an Independent Power:

1st. An indissoluble Union of the States under one Federal Head.

2dly. A Sacred regard to Public Justice.

3dly. The adoption of a proper Peace Establishment, and

4thly. The prevalence of that pacific and friendly Disposition, among the People of the United States, which will induce them to forget their local prejudices and policies, to make those mutual concessions which are requisite to the general prosperity, and in some instances, to sacrifice their individual advantages to the interest of the Community. . . .

. . .it will be a part of my duty. . .to insist upon the following positions:

That unless the States will suffer Congress to exercise those prerogatives they are undoubtedly invested with by the Constitution [the Articles of Confederation], every thing must very rapidly tend to Anarchy and confusion; That it is indispensable to the happiness of the individual States, that there should be lodged somewhere, a Supreme Power to regulate and govern the general concerns of the Confederated Republic. . .; That there must be a faithful and pointed compliance on the part of every State, with the late proposals and demands of Congress, or the most fatal consequences will ensue; That whatever measures have a tendency to dissolve the Union, or. . .lesson the Sovereign Authority, ought to be considered as hostile to the Liberty and Independence of America. . . .

Document 2: A Warning Against Hasty Revision of the Articles of Confederation

Richard Henry Lee of Virginia was the president (presiding officer) of Congress in 1785. In a letter to Samuel Morse in 1785, Lee argued against any immediate revision of the Articles of Confederation intended to strengthen the government of the United States.

1. Why did Lee oppose immediate changes in the Articles of Confederation?
2. To what extent did Lee disagree with the views of George Washington? Explain.

. . .we hear a constant cry. . .That Congress must have more power—That we cannot be secure & happy until Congress command implicitly both purse & sword. So that our confederation must be perpetually changing to answer sinister views in the greater part, until every fence is thrown down that was designed to protect & cover the rights of Mankind. It is a melancholy consideration that many wise & good men have, somehow or other, fallen in with these ruinous opinions. I think Sir that the first maxim of a man who loves liberty should be, never to grant to Rulers an atom of power that is not most clearly & indispensably necessary for the safety and well being of Society. To say that these Rulers are revocable, and holding their places during pleasure may not be supposed to design evil for self-aggrandizement, is affirming what I cannot easily admit. Look to history and see how often the liberties of mankind have been oppressed & ruined by the same delusive hopes & fallacious reasoning. The fact is, that power poisons the mind of its possessor and aids him to remove the shackles that restrain itself. To be sure, all things human must partake of human infirmity, and therefore the Confederation should not be presumptuously called an infallible system for all times and all situations—but tho' this is true, yet as it is a great and fundamental system of Union & Security, no change should be admitted until proved to be necessary by the fairest fullest & most mature experience. . . .

Document 3: Opposition to a Constitutional Convention

In 1785, a majority in the Massachusetts State Legislature voted to advise the state's delegates in Congress to propose a convention for the purpose of revising the Articles of Confederaton. The state legislators expressed concern that without the power to regulate commerce or to raise taxes the government of the United States was too weak. The Massachusetts delegation in Congress refused to follow the advice of their state legislature. They explained their opposition to a constitutional convention in a letter to the state legislature, dated September 3, 1785.

1. Why did the delegates to Congress from Massachusetts oppose a convention to revise the Articles of Confederation?
2. To what extent did their opinions agree with those of Richard Henry Lee and George Washington?

. . .The great object of the Revolution was the establishment of good government, and each of the states, in forming their own as well as the federal constitution, have adopted republican principles. Notwithstanding this, plans have been artfully laid and vigorously pursued which, had they been successful, we think, would inevitably have changed our republican governments into baleful aristocracies. Those plans are frustrated, but the same spirit remains in their abettors. . . .

What the effect then may be of calling a convention to revise the Confederation generally, we leave with. . .the honorable legislature to determine. We are apprehensive, and it is our duty to declare it, that such a measure would produce throughout the Union an exertion of the friends of an aristocracy to send members who would promote a change of government. . . .

. . .we think there is a great danger of a report [from a convention to revise the Articles of Confederation] which would invest Congress with powers that the honorable legislature have not the most distant intention to delegate. Perhaps it may be said this can produce no ill effect; because Congress may correct the report, however exceptionable, or, if passed by them, any of the states may refuse to ratify it. True it is that Congress and the states have such powers; but would not such a report affect the tranquility and weaken the government of the Union?

. . .every measure should be avoided which would strengthen the hands of the enemies to a free government. . . .

Document 4: Predictions of Crisis

On June 27, 1786, John Jay wrote to George Washington from New York. He said: "Our affairs seem to lead to some crisis, some revolution—something that I cannot foresee or conjecture." Washington replied to Jay's letter on August 1, 1786.

1. Did Washington agree with Jay?
2. How similar were Washington's views in this letter to his opinions in his letter of 1783? (See Document 1.)

Your sentiments that our affairs are drawing rapidly to a crisis, accord with my own. . . . I do not conceive we can exist long as a nation without having lodged somewhere a power, which will pervade the whole Union in as energetic a manner as the authority of the state governments extends over the several states.

What astonishing changes a few years are capable of producing. I am told that even respectable characters speak of a monarchical form of government without horror. . . . What a triumph for our enemies to verify their predictions! What a triumph for the advocates of despotism to find, that we are incapable of governing ourselves, and that systems founded on the basis of equal liberty are. . . fallacious. Would to God, that wise measures may be taken in time to avert the consequences we have but too much reason to apprehend. . . .

Document 5: Reasons for Shays' Rebellion

Economic conditions were bad in 1786. Farmers suffered a great deal. Many had large debts. In western Massachusetts, discontent grew as farmers who could not pay their debts lost their homes and farms. Some people went to jail for not paying debts.

The poor farmers turned to the state government for help. But the state legislature did nothing to aid them. Popular discontent led to riots. Mobs stopped government officials from punishing debtors and from auctioning off the property of those in debt.

Daniel Shays, a veteran of the War of Independence, became a leader of several hundred rebels in November of 1786. His men threatened state government officials until the state militia routed them in February of 1787.

Daniel Gray of Hampshire County spoke on behalf of the rebels. He told the public why the farmers led by Daniel Shays had rioted.

According to Daniel Gray, what were main reasons for the rebellion?

We have thought proper to inform you of some of the principal causes of the late risings of the people and also of their present movement, viz.:

1. The present expensive mode of collecting debts, which by reason of the great scarcity of cash will of necessity fill our jails with unhappy debtors, and thereby a reputable body of people rendered incapable of being serviceable either to themselves or the community.
2. The monies raised by impost and and excise being appropriated to discharge the interest of governmental securities, and not the foreign debt, when these securities are not subject to taxation.
3. A suspension of the writ of habeas corpus, by which those persons who have stepped forth to assert and maintain the rights of the people are liable to be taken and conveyed even to the most distant part of the commonwealth, and thereby subjected to an unjust punishment.
4. The unlimited power granted to justices of the peace, and sheriffs, deputy sheriffs, and constables by the Riot Act, indemnifying them to the prosecution thereof; when perhaps wholly actuated from a principle of revenge, hatred, and envy. . . .

Document 6: A Letter About Shays' Rebellion

The Massachusetts state militia quickly crushed Shays' Rebellion. Nonetheless, this event alarmed many Americans who saw it as a manifestation of the problems of the Articles of Confederation. Abigail Adams, in England with her husband John, received reports from friends in her home state of Massachusetts. On January 2, 1787, she expressed her views of the rebellion in a letter to Thomas Jefferson.

1. What did Abigail Adams' think of the rebels?
2. What views did she hold about the likely causes and consequences of the rebellion?

With regard to the tumults in my native state which you inquire about, I wish I could say that report had exaggerated them. It is too true, sir, that they have been carried to so alarming a height as to stop the courts of justice in several counties. Ignorant, restless deperadoes, without conscience or principles, have led a deluded multitude to follow their standard, under pretense of grievances which have no existence but in their imaginations. Some of them were crying out for a paper currency, some for an equal distribution of property, some were for annihilating all debts, others complaining that the Senate was a useless branch of government, that the Court of Common Pleas was unnecessary, and that the sitting of the General Court in Boston was a grievance. By this list you will see the materials which compose this rebellion and the necessity there is of the widest and most vigorous measures to quell and suppress it. Instead of that laudable spirit which you approve, which makes a people watchful over their liberties and alert in the defense of them, these mobbish insurgents are for sapping the foundation, and destroying the whole fabric at once.

But as these people make only a small part of the state, when compared to the more sensible and judicious, and although they create a just alarm and give much trouble and uneasiness, I cannot help flattering myself that they will prove salutary to the state at large, by leading to an investigation of the causes which have produced these commotions. . . .

The lower order of the community were pressed for taxes, and though possessed of landed property they were unable to answer the demand, while those who possessed money were fearful of lending. . . .

Document 7: A Future President Responds to Shays' Rebellion

Thomas Jefferson, in Paris when he first heard about Shays' Rebellion, was less concerned about the Rebellion than those closer to it. Living in Europe gave Jefferson the opportunity to view the Rebellion with perspective and without panic. The first document presented below is an excerpt from a letter Jefferson wrote to Edward Carrington in the middle of January. The second excerpt comes from a letter to James Madison written on January 30, 1787.

1. How does Jefferson's response to the Rebellion differ from Abigail Adams'?
2. What good does Jefferson see coming out of social unrest?
3. Which does Jefferson think is more important, public order or the right of the people to protest actions of the government, even in error?
4. Which does Jefferson think more important, the power of the government or the right of the people to read newspapers and to know what the government is doing? Why does he think this?

The tumults in America [Shays' Rebellion], I expected would have produced in Europe an unfavorable opinion of our political state. But it has not. On the contrary, the small effect of those tumults seems to have given more confidence in the firmness of our governments. The interposition of the people themselves on the side of the government has had a great effect on the opinion over here. I am persuaded myself that the good sense of the people will always be found to be the best army. They may be led astray for a moment but will soon correct themselves. The people are the only censors of their governors: and even their errors will tend to keep these [the governors, or office holders] to the true principles of their institution. To punish these errors too severely would be to suppress the only safeguard of the public liberty. The way to prevent these [rebellions]. . .of the people is to give them full information. . . . The basis of our government being the opinion of the people. . .and were it left to me to decide whether we should have a government without newspapers, or newspapers without a government, I should not hesitate for a moment to prefer the latter.

I am impatient to learn your sentiments on the late troubles in the Eastern states. So far as I have yet seen, they do not appear to threaten serious consequences. Those States have suffered by the stoppage. . .of their commerce. . . . This must render money scarce, and make the people uneasy. This uneasiness has produced acts absolutely unjustifiable: but I hope they will provoke no severities from their governments. . . . Even this evil is productive of good. It prevents the degeneracy of government, and nourishes a general attention to the public affairs. I hold it, that a little rebellion, now and then, is a good thing, and as necessary in the political world as storms in the physical. . .honest republican governors [should be] so mild in their punishment of rebellions, as not to discourage them too much. It is a medicine necessary for the sound health of government.

Document 8: Report from the Annapolis Convention

James Madison of Virginia persuaded his state legislature to call for a meeting of representatives from the thirteen states to discuss amendments to the Articles of Confederation. The Amendments were to provide for effective regulation of commerce between the states. However, only New York, New Jersey, Delaware, Pennsylvania, and Virginia sent delegates to attend a meeting held at Annapolis, Maryland, from September 11-14, 1786. Disappointed at the turnout, Madison and others at the convention decided *not* to discuss revisions to the Articles of Confederation. Instead, they issued a report. The report invited the governments of the thirteen states to send delegates to a convention in Philadelphia in May 1787. They also sent a copy to the Congress of the United States. The proposed meeting in Philadelphia would convene to revise the Articles of Confederation. Alexander Hamilton of New York wrote the report of the Annapolis Convention.

1. Why was this report written?
2. What views about the Articles of Confederation did Hamilton express in this report?

To the Honorable, the legislatures of Virginia, Delaware, Pennsylvania, New Jersey, and New York, the commissioners from the said states, respectively assembled at Annapolis humbly beg leave to report. . . .

That there are important defects in the system of the federal government is acknowledged by the acts of all those states which have concurred in the present meeting; that the defects, upon closer examination, may be found greater and more numerous than even these acts imply is at least so far probable, from the embarrassments which characterize the present state of our national affairs, foreign and domestic, as may reasonably be supposed to merit a deliberate and candid discussion, in some mode, which will unite the sentiments and councils of all the states. In the choice of the mode, your commissioners are of opinion that a convention of deputies from the different states, for the special and sole purpose of entering into this investigation and digesting a plan for supplying such defects as may be discovered to exist, will be entitled to a preference. . . .

. . .your commissioners, with the most respectful deference, beg leave to suggest their unanimous conviction that it may essentially tend to advance the interests of the Union if the states, by whom they have been respectively delegated, would themselves concur and use their endeavors to procure the concurrence of the other states in the appointment of commissioners, to meet at Philadelphia on the second Monday in May next, to take into consideration the situation of the United States, to devise such further provisions as shall appear to them necessary to render the Constitution of the federal government adequate to the exigencies of the Union; and to report such an act for that purpose to the United States in Congress assembled, as when agreed to by them, and afterward confirmed by the legislatures of every state, will effectually provide for the same. . . .

Document 9: Approval by Congress of a Convention to Revise the Articles of Confederation

On February 21, 1787, Congress, approving the report of the Annapolis Convention, granted official approval to the proposed convention in Philadelphia. Even before Congress had acted, six states had appointed delegates to the convention: Delaware, Georgia, New Jersey, North Carolina, Pennsylvania, and Virginia.

By June, 1787, six other states had appointed delegates: Maryland, Connecticut, Massachusetts, New Hampshire, New York, and South Carolina. The state officials of Rhode Island decided not to send representatives to the convention.

1. What mission did Congress set for the convention in Philadelphia?
2. To what extent did this document reflect the report of the Annapolis Convention?

Whereas there is provision in the Articles of Confederation & perpetual Union for making alterations therein by the Assent of a Congress of the United States and of the legislatures of the several States; And whereas experience hath evinced that there are defects in the present Confederation. . . .

Resolved that in the opinion of Congress it is expedient that on the second Monday in May next a Convention of delegates who shall have been appointed by the several states be held at Philadelphia for the sole and express purpose of revising the Articles of Confederation and reporting to Congress and the several legislatures such alterations and provisions as shall when agreed to in Congress and confirmed by the states render the federal constitution adequate to the exigencies of Government & the preservations of the Union.

Document 10: Notes of a Delegate to the Constitutional Convention

The Constitutional Convention met in Philadelphia from May until September 17, 1787. James Madison of Virginia, one of the earliest effective critics of government under the Articles of Confederation, was a leading participant. He also led the movement to convene the Constitutional Convention in Philadelphia. Madison prepared diligently for the convention. He made careful plans about changes in the government that he wanted to propose at the convention. He also noted, in April of 1787, main weaknesses of the government of the United States, which required correction.

What were Madison's views about weaknesses of government under the Articles of Confederation?

Vices of the Political System of the United States:

1. Failure of the States to comply with the Constitutional Requisitions.
2. Encroachments by the States on the federal authority.
3. Violations of the law of nations and treaties.
4. Trespasses of the states on the rights of each other.
5. Want of concert in matters where common interest requires it.
6. Want of Guaranty to the States of their Constitutions and laws against internal violence.
7. Want of sanction to the laws, and of coercion in the Government of the Confederacy.

8. Want of ratification by the people of the articles of Confederation.
9. Multiplicity of the laws in the several States.
10. Mutability of the laws of the States.

Document 11: Washington's Advice to Delegates at the Constitutional Convention

The first meeting of the Constitutional Covnention began on May 25, 1787. The delegates voted unanimously to elect George Washington president of the Convention. According to the official records, he spoke to the Convention only twice. Otherwise he carefully maintained order as the presiding officer and directed the business of the Convention efficiently and effectively. He also influenced the ideas and decisions of delegates informally through dinner meetings and private conversations.

Two excerpts illustrating Washington's position at the Convention appear below. The *first* example comes from a letter written to Thomas Jefferson on May 30, 1787, who was in Paris, France. It reveals the kind of private advice that he offered to delegates. The *second* consists of a section of a brief speech that Washington made to the delegates during the opening phase of the Convention.

1. How similar were the views of Washington in 1787 to his views in 1783? (See Document 1.)
2. To what extent did Washington agree or disagree with the mission set for the Convention by the Congress of the United States?
3. What might have been Washington's purpose in speaking to the delegates as revealed in the document below?

Washington to Jefferson, May 30, 1787

. . . the situation of the general government, if it can be called a government, is shaken to its foundation, and liable to be overturned by every blast. In a word it is at an end; and, unless a remedy is soon applied, anarchy and confusion will inevitably ensue.

Remarks to the Convention

It is too probable that no plan we propose will be adopted. Perhaps another dreadful conflict is to be sustained. If to please the people, we offer what we ourselves disapprove, how can we afterwards defend our work? Let us raise a standard to which the wise and honest can repair. . . .

EXERCISES FOR LESSON II-5

Using Evidence from Documents

Use evidence from Documents 1-11 to respond to the activities and questions that follow.

1. Match the events in list I with the date on which they occurred. Place the letter corresponding to the correct date in list II in the space next to the appropriate event in list I. you may use items in list II more than once.

	List I	List II
____	1. Start of Shays' Rebellion	A. 1781
		B. 1782
____	2. Annapolis Convention	C. 1783
____	3. Washington's letter to the 13 state governments	D. 1784
		E. 1785
____	4. Beginning of the Constitutional Convention	F. 1786
____	5. End of Shays' Rebellion	G. 1787
____	6. Refusal of Massachusetts' delegation to Congress to support the convening of a constitutional convention	
____	7. Richard Henry Lee's opposition to revision of the Articles of Confederation	

2. Which of these statements can be supported with evidence from Documents 1-11?

   (a) Place an "X" in the space next to each item that is backed up or supported conclusively by evidence in Documents 1-11.

   (b) Place an "O" in the space next to each item that evidence in Documents 1-11 proves conclusively false.

   (c) Make **no** mark in the space next to each item that is neither supported nor rejected conclusively by evidence in Documents 1-11. (These items might be true or false; however, there is not sufficient evidence in these documents to make conclusive judgments.)

Be prepared to explain your responses. Refer to the content of particular documents to support your answers.

____ a. Members of Congress gave the Articles of Confederation practically no support during the period from 1783-1787.

____ b. George Washington wrote that he wanted to replace the Articles of Confederation with a new constitution as early as 1783.

____ c. Shays' Rebellion influenced the majority of Americans to support the replacement of the Articles of Confederation with a new constitution.

____ d. Members of Congress were the primary supporters of the movement to hold a constitutional convention.

____ e. A main criticism of government under the Articles of Confederation emphasized the lack of power delegated to the central government to make and enforce laws throughout the United States.

____ f. A main concern of those who supported the Articles of Confederation was reflected on the fear that a new constitution might permit a strong central government to destroy important rights of the states and liberties of the people.

3. Use evidence in Documents 1-11 to begin discussion of these questions.

   a. Why did George Washington, Alexander Hamilton, and James Madison want basic changes in the plan for government of the United States?

   b. Why did Richard Henry Lee and the Massachusetts delegation to the Congress oppose basic revisions in the Articles of Confederation?

   c. Why did Washington, Hamilton, Madison, and their supporters succeed in their plans to convene a constitutional convention?

4. What additional evidence would be helpful in answering the preceding questions? Make a list of types of documents, or specific documents, that might include evidence needed to make more complete responses to the preceding questions.

II-6. WASHINGTON'S DECISION TO ATTEND THE CONSTITUTIONAL CONVENTION

LESSON PLAN AND NOTES FOR TEACHERS

Preview of Main Points

This lesson tells about the decision of George Washington to attend the meeting in Philadelphia, which became the Constitutional Convention in 1787. The conflicting pressures, which made Washington's decision difficult, are discussed. A main purpose of this lesson is to introduce decision making as it confronts citizens in a free society. Students are introduced to procedures that help them clarify, analyze, and make decisions.

Connection to Textbooks

This lesson can be used with standard textbook discussions of the events that led to the Constitutional Convention at Philadelphia in 1787. None of the standard textbooks includes a detailed discussion of Washington's difficult decision to attend the Convention. Most of the textbooks do not even mention this interesting and revealing choice. This case study can be used as an introductory lesson to precede textbook treatments of the Constitutional Convention.

Connections to Other Lessons in This Book

This case study is an introduction to a decision making routine and a graphic device to chart decisions (the decision tree), which are applicable to several other lessons in this book. This lesson provides a simple introduction and guide to the basic steps of rational decision making. Many students may be unfamiliar with this decision making routine. If so, this lesson is a prerequisite to several decision-making lessons in various parts of the book. Students who are familiar with lessons about decision making may find this lesson to be a useful review.

Objectives

Students are expected to:

1. Explain the situation that brought about Washington's occasion for decision in this case.
2. Identify Washington's alternatives in this case.
3. Identify reasons for and against a decision by Washington to attend the convention in Philadelphia.
4. Explain why Washington decided to attend the convention.
5. Explain the uses of a decision tree.
6. Use a decision tree to explain the main steps in making a decision, such as Washington's choice to attend the convention.
7. Appraise Washington's decision in terms of the decision's (a) effect on Washington, (b) effect on various others, (c) practicality, (d) fairness.

Suggestions for Teaching the Lesson

This lesson can be used as a "springboard" into textbook discussions of the organization of the convention in Philadelphia. The lesson also may be used as a simple introduction to decision making by citizens, which may be necessary for students who have not encountered this type of lesson before.

Opening the Lesson

- Begin by previewing the main points and purposes of the lesson. This provides students with a sense of direction.

Developing the Lesson

- Have the students read the description of Washington's decision. Then conduct a discussion of the questions that follow the case to make certain that students know the main facts and ideas. These questions appear on page 71.
- Move to the part of the lesson about the analysis of Washington's decision, which introduces a decision-making routine and the decision tree. You might make use of a transparency of a decision tree to guide class discussion of the main parts of the decision making routing—(1) alternatives, (2) consequences, and (3) goals.
- Ask students to give examples of alternatives, consequences, and goals to demonstrate that they understand these ideas.
- Emphasize the meaning of the decision-making routine, so that students will be able to analyze and make decisions systematically in subsequent lessons.
- Have students look at the goals in the decision tree about Washington's decision. Then ask them to answer the questions about goals on page 72.
- Have students look at the consequences in the decision tree. Then ask them to complete the activity on page 72, which involves listing of positive and negative effects of Washington's alternatives.
- Have students discuss the questions on page 72 about the practicality of Washington's decision.

Concluding the Lesson

- Conclude the lesson by conducting a discussion of the questions at the end of the lesson, on page 72.
- The final question involves an overall judgment about the worth of Washington's decision. Ask students to support their judgment with evidence and examples drawn from the case study of Washington's decision and their examination of the decision tree.

Note on Uses of Evidence

This lesson introduces students to the use of quotations from letters as an historical source. Two aspects might be worth pointing out to the students. First, the students will quickly see that language in the 18th century was different from the language of today. Students should be urged to keep this in mind when they read historical sources, including the Constitution itself. Second, the students may wonder about the dots in the middle of the first quotation from a Washington letter. This of course is an ellipsis, which indicates that some words have been left out of a quotation. This is used in many forms of writing. Students should be aware of this usage. The ellipsis is designed to allow a writer to quote from the most relevant parts of a letter, speech, or article (or any other source) without quoting the entire source. Sometimes an ellipsis may be used to emphasize a point, while cutting out unnecessary material in the middle of a passage. Students should also be aware that it is possible to change the meaning of a sentence through an ellipsis. Such a use—or misuse—of an ellipsis is something like lying, because an author who misuses an ellipsis in that way is attributing a statement to a source when in fact the source did not make such a statement.

How to Use Decision Trees in *Lessons on the Constitution*

Several lessons in this book involve the use of a decision tree to analyze historical events or situations. For example, Lesson IV-6 has students use a decision tree to study Jefferson's decision to purchase Louisiana. What is a decision tree?

The decision tree is an analytical tool that helps students study the decisions of others as well as make their own decisions. It is based on a problem-solving procedure that involves mapping the likely alternatives and consequences of an occasion for decision.[*]

Decision trees may be used by students of history or government to analyze complex issues or events, to study key decisions in history and/or to sharpen critical thinking/information acquisition skills through analysis of historical cases.

How do students use decision trees? In Lesson II-6 students apply a decision tree to George Washington's decision to attend or stay away from the Constitutional Convention. *This lesson is designed to introduce students to the decision tree.* Reading the lesson (whether you, the teacher, plan to teach it or not) will help you understand this teaching strategy.

Decision trees graphically show the four key elements of decision making. As students fill in decision trees, they use these elements to analyze historical issues and decisions in a systematic fashion. These elements are discussed briefly below.

1. *Confrontation with the need for choice—an occasion for decision.* An occasion for decision is a problem situtation where the solution is not obvious. The occasion for decision is the *context* for the decision problem. For example, Washington, an advocate of a strong central government, was invited to attend the Constitutional Convention. To go to the Convention involved serious political risks. Furthermore, Washington felt pressured to stay home to deal with serious personal problems. However, he wanted to be part of any moves to change the government of the United States.

2. *Determination of important values or goals affecting the decision.* One goal for Washington was to deal with his problems at home. Another goal, however, was to strengthen the government of the United States of America.

3. *Identification of alternatives.* Alternatives in this situation were to attend the Convention or to stay at home.

4. *Predicting the positive and negative consequences of alternatives in terms of stated goals or values.* Washington considered likely consequences of his choices. For example, to attend the Convention could lead him to neglect family problems. Missing the Convention would forfeit his opportunity to help improve the government. However, staying at home would avoid any political risks, if the Convention failed.

"Climbing the Decision Tree."

Once they have studied the *occasion for decision,* students may begin work on the remainder of the decision tree at any point. There is no one "correct" or "right" place to start on a decision tree. Sometimes students may start at the bottom with *alternatives* and work up. With other problems it may be more natural or appropriate to begin by considering the *values or goals* in a problem and work down. The students' perception of the goals involved in a decision or the alternatives available may change as they work their way through the decision tree.

Using Facts and Values

When using a decision tree, students learn that both facts and values are involved in decision making. Facts are involved when decision-makers identify and consider alternatives and their likely consequences. Should Washington attend the Constitutional Convention? In part his decision involved assessing facts. Who called the Convention? Did other leaders plan to attend? Did Congress approve of the meeting?

Values and value judgments are also a critical part of thoughtful decision making. Decision makers express value judgments when labeling consequences as negative or positive. While establishing goals, the decision maker is engaged in thinking about values and in ethical reasoning. Such thinking involves asking, "What is important, what do I want, and what is right or wrong in this situation?"

Suggested Reading

Flexner, James Thomas. *George Washington and the New Nation: 1783-1793.* Boston: Little, Brown and Company, 1970, 30-111. This book is part of a set of four volumes on the life of Washington. It is considered the best biography of Washington. Pages 30-111 tell about the events of Washington's life from 1783-1787, prior to his participation in the Constitutional Convention.

Flexner, James Thomas. *Washington: The Indispensable Man.* Boston: Little, Brown and Company, 1969. This book is available in paperback and highly readable. Many high school juniors and seniors will find it an enjoyable and worthwhile biography.

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[*] See, for example, Howard Raiffa, *Decision Analysis* (Reading, MA: Addison-Wesley Publishing Company, 1968). The decision tree, as used here, was developed by Roger LaRaus and Richard Remy as part of the work of the Mershon Center at The Ohio State University. See Roger LaRaus and Richard C. Remy, *Citizenship Decision Making: Skill Activities and Materials* (Menlo Park, CA: Addison-Wesley, Innovative Publications Division, 1978).

II-6. WASHINGTON'S DECISION TO ATTEND THE CONSTITUTIONAL CONVENTION

Background to a Difficult Decision

When the Revolution ended General George Washington went home. After eight years of continuous service to his country, the man who had become the greatest hero of his age, both in America and abroad, retired from public office. Washington wanted to enjoy the last years of his life as a gentleman farmer on his Virginia plantation. Although Washington had spent almost his entire life in public service—as a surveyor of western lands, a politician, and a soldier in two wars—he always claimed to prefer the life of a planter.

At 51, Washington felt relieved that he no longer had to bear the great responsibilities of leading an army and helping to create a nation. He wrote his friend and former comrade-in-arms, the Marquis de Lafayette:

> I am become a private citizen on the banks of the Potomac, and under the shadow of my own vine and my own fig tree. Free from the bustle of a camp and the busy scenes of public life, I am . . . not only retired from all public employment, but I am retiring within myself, and shall be able to wend the solitary walk and tread the paths of private life with heartfelt satisfaction. Envious of none, I am determined to be pleased with all, and this, my dear friend, being the order of my march, I will move gently down the stream of life until I sleep with my fathers.

In a letter to the American people Washington declared he would never again "take any share in public business." He also issued a warning about the need for a stronger national government. During the war Washington's troops often went without adequate food or clothing. Moreover, many never received the wages owed them because the government under the Articles of Confederation proved unable to raise money through taxation. Without exaggerating, Washington wrote: "No man in the United States is, or can be, more deeply impressed with the necessity of reform in our present Confederation than myself."

Washington's advice went unheeded, and no amendments were added to the Articles of Confederation. Consequently, from 1783 to 1786, the new American nation suffered from an ineffective national government. Many citizens doubted that the weak United States could survive. It seemed likely that the fragile national union would disband into several competing republics.

As the nation's troubles worsened, many citizens, and some state governments, saw that the Articles of Confederation needed to be changed. In 1786 representatives from five states met at Annapolis, Maryland to discuss ways to reform the national government. The Annapolis Convention, as this meeting was known, accomplished little. However, it set the stage for the Constitutional Convention a year later. The men who met at Annapolis called for such a Convention to convene in Philadelphia in May 1787. A number of states quickly endorsed the idea and eventually, a reluctant Congress agreed to the proposal. The organizers officially invited each state government to select delegates who would participate in the meeting to amend the Articles of Confederation.

The Occasion for a Decision

The Virginia government chose Washington to head the state delegation. Washington, however, was puzzled about whether to go to Philadelphia. There seemed to be important reasons for staying at home.

George Washington faced a difficult decision. Should he attend the Convention in Philadelphia?

Reasons for Not Going to the Convention

Washington certainly did not feel up to a long, hard trip. He was 55-years-old, and he often felt older. His body usually ached from rheumatism; sometimes he could not lift his arm as high as his head.

Family problems were pressing Washington. His 79-year-old mother was very ill, as was his sister. They lived nearby and often asked for help. His brother had died in January 1787, which depressed Washington very much. He also wanted to help his dead brother's children.

The general's wife, Martha, did not want her husband to leave home again. She had hardly seen him during the eight years of the War for Independence. After the war, in 1783, she said: "I had anticipated that from this moment we should have been left to grow old in solitude and tranquility together." Likewise, Washington was reluctant to once again forsake the comforts of his home for public service.

Business problems constantly worried Washington. He hesitated to leave his plantation because the place needed his attention. He had repairs to make and debts to pay. He believed he owed it to himself and his family to attend to these matters.

The political reasons for staying home loomed larger than the personal reasons. First, what if the convention failed? What if most states didn't bother to send delegates? Washington might endure embarrassment. His great repututation might suffer. His old friend, Henry Knox, advised him to stay home to protect his good name. Even James Madison, the Convention's strongest supporter, wrote: "It ought not to be wished by any of his friends that he should participate in any abortive undertakings."

John Jay, another strong supporter of the Convention, reminded Washington that the convention wasn't quite legal. The organizers of the Philadelphia Convention were ignoring the legal procedures for amending the Articles of Confederation. The Congress had not yet approved of the Convention. Should Washington go to a meeting that citizens might view as illegal?

Washington also remembered his promise to stay out of "public business." If he accepted election as a delegate to the convention, people might say that he had broken his word. They might also think he wanted to use the convention to gain power in the government. Did he want to risk being called a hypocrite? Did he want to seem to be a schemer in pursuit of personal power and glory?

Reasons for Going to the Convention

On February 21, Congress recognized the Convention, giving the meeting an appearance of legality.

By the end of March, most states appeared ready to send delegates to Philadelphia. Only Rhode Island seemed likely to boycott the meeting. No one doubted that a convention, which might be successful, would meet. How would Washington feel if that convention accomplished great things in his absence? Would his reputation suffer if the delegates made great decisions while he stayed home?

Washington found out that most of the delegates already selected had great reputations. As a delegate to the Convention, he would belong to a select group.

During March 1787, Washington received many letters urging him to attend the convention. His wartime comrades asked their general to preserve the fruits of their victory by helping to create an effective national government. Henry Knox changed his advice. He wrote "It is the general wish that you should attend."

Some leaders believed that Washington's participation might make the difference between success or failure at the Convention. The citizens respected Washington so much that his attendance would make the Convention seem legitimate.

Why Washington Decided to Go

On March 28, George Washington wrote Governor Randolph agreeing to lead the Virginia delegation in Philadelphia. Washington feared that Americans would consider him a bad citizen if he did not participate in an event of such great significance. He decided his duty required him to attend the Convention.

Washington very much wanted his new nation to succeed. "To see this country happy. . . is so much the wish of my soul," he wrote. He had to help, whatever the personal or political risks.

His fellow citizens needed him, so Washington once again rose to the challenge of public responsiblity. He mustered his strength and went to Philadelphia in May 1787.

Henry Knox observed: "Secure as he was in his fame, he has again committed it to the mercy of events. Nothing but the critical situation of his country would have induced him to so hazardous a conduct."

EXERCISES FOR LESSON II-6

Reviewing Facts and Main Ideas About Washington's Decision

1. What was the difficult decision facing George Washington in 1787?
2. What political events brought about Washington's decision.
3. What were main reasons for *not* attending the Constitutional Convention in Philadelphia?
4. What were main reasons for attending the Constitutional Convention?

Analysis of Washington's Decision

George Washington's decision to attend the Constitutional Convention involved **alternatives, consequences,** and **goals.** Anyone faced with a difficult decision should think carefully about these questions:

1. What are my alternatives or choices?
2. What are the possible and probable consequences, or outcomes, of each choice?
3. What are my goals? (What do I want or value in this situation?)
4. In view of my goals, which consequences are best in this situation?
5. What choice or decision should I make? (Which choice is most likely to lead toward my goals?)

You can use a decision tree to keep track of a decision maker's answers to the questions about goals, alternatives, and consequences. Look at the decision tree, on page 73, about George Washington's decision to attend the convention. This decision tree is a chart, which shows the alternatives, consequences, and goals that were involved in Washington's occasion for decision—whether or not to attend the convention.

Look at the Decision Tree and answer this question: What were Washington's alternatives in this case?

Washington's main goals in this case reveal his values—his beliefs about what is good or bad, right or wrong. The goals in this chart are guides to Washington's choice to attend the Constitutional Convention. They help us to understand why he thought one alternative was better than the other in this occasion for decision.

Look at the decision tree and answer these questions:

1. What were Washington's goals in this case?
2. What do Washington's goals tell us about his values?
3. How do Washington's goals and values explain his decision to attend the Convention?

Identifying alternatives, consequences, and goals can help you understand and analyze any decision-making situation. Good decisions have good consequences for the decision maker and others. The outcomes are desirable for the people affected by the decision.

Look at the decision tree and answer these questions:

1. What were positive and negative consequences associated with a decision to go to the Convention?
2. What were positive and negative consequences of a decision **not** to go to the Convention?

Washington's decision had some positive and negative effects on him and others. Make two lists. **First review the case study and identify how Washington's decision was likely to affect him. Next, review the case study and decision tree and identify how the decision was likely to affect various other individuals and groups.**

A **fair decision** balances the needs and wants of individuals with the needs and wants of the community to which they belong. **On balance, did Washington's decision seem fair to himself and others?**

Choosing a desirable consequence that is unlikely or impossible to achieve is not a practical decision. Thus, it is not a good decision. It is foolish to make decisions that are not very practical. **Was Washington's decision a practical choice?**

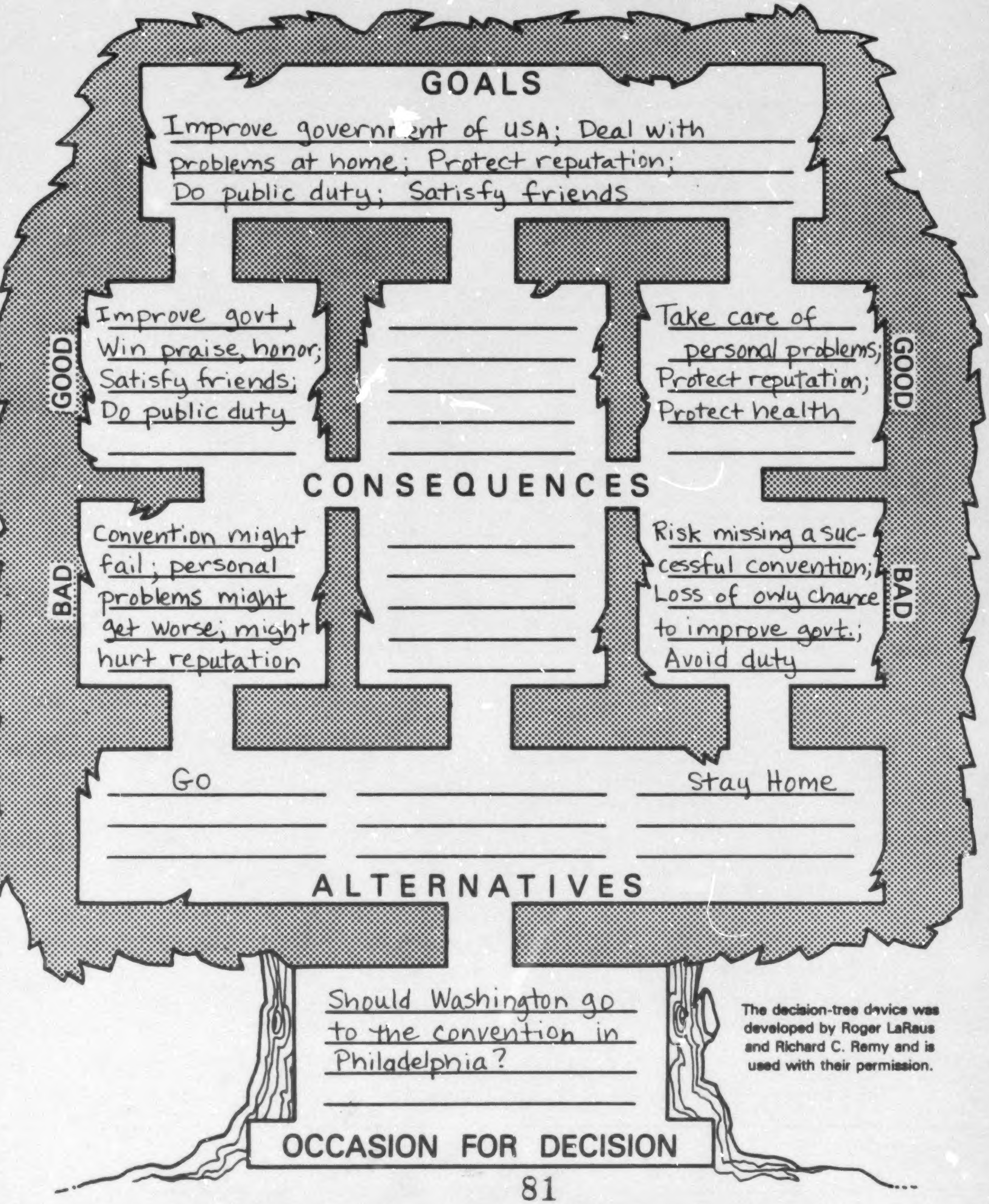
A chart, such as the decision tree, can help you to keep track of alternatives, consequences, and goals in any occasion for decision. The decision tree can help you to clarify your own decisions and to analyze the decisions of others.

When using the decision tree, you sometimes may wish to start with the alternatives and work your way to the goals. Sometimes, however, it may seem easier to start with goals by asking: What is best in this situation? You may enter the decision tree at different places when analyzing or making different decisions.

Reviewing the Use of a Decision Tree

1. What is a decision tree?
2. What are the uses of a decision tree?
3. Explain each of these parts of a decision tree:
    a. occasion for decision
    b. alternatives
    c. consequences
    d. goals
4. Do you believe that Washington made a good decision in this case? Explain.

DECISION TREE



GOALS

Improve government of USA; Deal with
problems at home; Protect reputation;
Do public duty; Satisfy friends

CONSEQUENCES

GOOD

Improve govt,
Win praise, honor;
Satisfy friends;
Do public duty

Take care of
personal problems;
Protect reputation;
Protect health

BAD

Convention might
fail; personal
problems might
get worse; might
hurt reputation

Risk missing a successful convention;
Loss of only chance
to improve govt.;
Avoid duty

ALTERNATIVES

Go

Stay Home

OCCASION FOR DECISION

Should Washington go
to the convention in
Philadelphia?

The decision-tree device was developed by Roger LaRaus and Richard C. Remy and is used with their permission.

II-7. DECISIONS ABOUT THE PRESIDENCY AT THE CONSTITUTIONAL CONVENTION

LESSON PLAN AND NOTES FOR TEACHERS

Preview of Main Points

This lesson tells about four critical decisions in the creation of the presidency, which were made by the Constitutional Convention of 1787. The decisions were about these questions: (1) Should the executive be one person or three? (2) How should the President be elected? (3) How long should the President serve? (4) Should the President have the veto power? Contending points of view are highlighted and brief quotations from the discussion at the Convention are featured. The manner of decision making at the Convention is shown through examples of orderly debate, compromise, and majority vote.

Connection to Textbooks

This lesson can be used to supplement standard textbook chapters about the Constitutional Convention, which appear in high school textbooks on American history and government. The typical textbook chapters emphasize the "Great Compromise" between large and small states about the composition of the national legislature. Other decisions are discussed briefly, such as the compromise about the tariff and slavery. Usually, the Convention's decisions about the presidency are mentioned, but not discussed. Thus, this lesson explains in detail decisions about an important facet of the Constitution, which are treated sketchily, at best, in the textbooks. It also illuminates the manner of discussion and decision making that prevailed at the Constitutional Convention, another element not presented in the textbooks.

Objectives

Students are expected to:

1. Explain the critical importance of the decisions about the presidency at the Constitutional Convention.
2. Explain why the Convention decided to have a singular executive in preference to a triumvirate.
3. Explain why the Convention decided upon the "Electoral College" in preference to popular or congressional election of the President.
4. Explain why the Convention decided upon a four-year term of office with the possibility of re-election in preference to alternative proposals.
5. Explain why the Convention decided to grant a veto power to the President, which could be overturned by two-thirds of the national legislature.
6. Explain how the Convention created an executive office that was both powerful and limited in the use of power.
7. Use evidence from primary sources to answer questions about characteristics of the presidency.
8. Use a decision tree to analyze one of the four decisions about the presidency that are featured in this lesson.

Suggestions For Teaching the Lesson

This lesson can be used as an "in-depth" case study of an important aspect of the Constitutional Convention. After reading the textbook chapter about the Constitutional Convention, students can turn to this case study for more details and ideas about the creation of the presidency.

Opening the Lesson

- Preview the main points of the lesson for students. You might also explain how this lesson is connected to the material they have been studying in the textbook.
- Read the words of Harry Truman on page 75 about the originality of the American presidency. Emphasize that the presidency is an American invention. Ask students to speculate about why this invention was created by Americans in 1787.

Developing the Lesson

- Have students read the case study. Then conduct a discussion of the review questions at the end of the lesson. Make certain that students have understood the main ideas of the lesson.
- Have students examine relevant parts of the Constitution to answer the interpretation questions. These questions require examination of Article I, Section 7; Article II; and Amendments XII, XX, XXII and XXV.
- Have students study the three statements by Presidents Washington, Roosevelt, and Truman. Then ask them to discuss the questions that follow these primary sources.

Concluding the Lesson

- Conclude the lesson with a decision making activity. Have students use the decision tree and the decision-making questions to guide analysis of one of the four occasions for decision featured in the lesson.
- One way to organize this activity is to divide the class into small groups of four or five students. Have each group use a decision tree chart to analyze one of the occasions for decision about the presidency. Then have one person from each group make a brief report of the group's analysis.

Suggested Reading

Bowen, Catherine Drinker. *Miracle At Philadelphia: The Story of the Constitutional Convention, May to September 1787.* Boston: Little, Brown and Company, 1966. Chapter V of this marvelous book deals with decisions at the Convention about the presidency. Most high school students would be able to read this interesting and worthwhile book.

Suggested Film

Inventing a Nation

After the Revolutionary War in 1787, prominent colonists met in Philadelphia to develop a framework for governing the colonies. The film dramatizes the secret debates among Hamilton, Mason, and Madison, and shows the contributions made by each to the final form and adoption of the Constitution. From *America: A Personal History of the United States* series, Time-Life Films, 1972, 30 minutes.

II-7. DECISIONS ABOUT THE PRESIDENCY AT THE CONSTITUTIONAL CONVENTION, 1787

Lack of executive power proved a main weakness of government under the Articles of Confederation. A president did serve, but he acted merely as the presiding officer (chairman) of the Congress.

As a main political purpose, the Constitutional Convention aimed to establish executive power to carry out the laws of the national government. **But what kind of executive office should the convention create?** No question puzzled and divided the delegates more than this one. The process of answering it involved lively debates and careful compromises of clashing opinions. The prolonged deliberation resulted in the creation of a unique executive office, the American presidency.

The making of the presidency in 1787 stands as one of great, original achievements of the Constitutional Convention. More than 150 years later, President Harry S. Truman said: "The Presidency is the most peculiar office in the world. There's never been one like it. . . ."

How did the framers invent the American presidency at the Constitutional Convention? What alternatives did the delegates consider? What critical decisions did they make about the scope and style of the executive office?

Agreeing to Establish Executive Power

The first proposal of an executive office was presented to the Convention on May 29, 1787, as part of the Virginia Plan. **Resolve 7** of the Virginia Plan recommended "that a national executive be instituted with power to carry into effect the national laws. . . ."

On June 1, Charles Pinckney of South Carolina urged a "vigorous executive." So did James Wilson of Pennsylvania, who envisioned an executive who could carry out duties with "energy, dispatch, and responsibility."

The delegates agreed to create an executive office with enough power to enforce laws. They disagreed, however, about the kind of executive office that they should create.

Two Views of the Executive Office

One group of delegates favored a single chief executive elected by all eligible voters of the United States. With the executive office independent of the Congress, the chief executive would have a broad range of distinct powers and duties. Prominent advocates of a strong chief executive included: (1) George Washington of Virginia, (2) James Wilson of Pennsylvania, (3) Gouverneur Morris of Pennsylvania, (4) James Madison of Virginia, (5) Alexander Hamilton of New York, (6) Elbridge Gerry of Massachusetts, (7) Rufus King of Massachusetts, (8) John Dickinson of Delaware, and (9) Pierce Butler of South Carolina.

Another group of delegates favored a plural executive office. In a plural executive office, more than one person with equal authority shares the powers and duties of the executive office. Congress would choose the executive officers who would report to the legislative branch of government. A strong fear of giving too much power to a single person motivated those in favor of this type of executive office. Preferring to adopt the British model of parliamentary government, the advocates of this position favored a government dominated by the Congress. Prominent supporters of this position included: (1) George Mason of Virginia, (2) Roger Sherman of Connecticut, (3) Benjamin Franklin of Pennsylvania, (4) Hugh Williamson of North Carolina, and (5) Edmund Randolph of Virginia.

Advocates of these conflicting views of the executive office competed for support among the delegates at the Constitutional Convention. They often resolved differences through compromise; that is, each side gave up more or less of what it wanted in order to reach an agreement that a majority of those at the Convention could approve.

Like most other major decisions at the Constitutional Convention, the critical decisions that created the office of President were products of compromise. The delegates agreed to compromises on four important questions about the executive office:

1. Should the executive be one person or three?
2. How should the President be elected?
3. How long should the President serve?
4. Should the President have the veto power?

Should the Executive Be One Person or Three?

On June 1, 1787, James Wilson, of Pennsylvania proposed that a single person should head the executive branch. Wilson said the United States needed a single chief executive to provide effective leadership and administration for the national government. He tried to convince skeptics that a single, powerful executive would not become a tyrant, as long as the Congress had enough power to check and limit the chief executive's power.

Opponents, however, remained unconvinced by Wilson's arguments. Edmund Randolph, for example, spoke against a strong chief executive, because it seemed too similar to a monarchy. He recommended that three men from different parts of the country share the executive office.

George Mason of Virginia supported this motion. He feared that establishing a single executive would "pave the way to hereditary monarchy." On June 4, he reasoned that three executives, each representing a different section of the country, would "bring with them, into office, a more perfect and extensive knowledge of the real interests of this great Union."

James Wilson led the opposition to a three-man executive. He argued that adopting this plan would establish an executive handicapped by constant conflict and squabbling among the three executives. Wilson expected "nothing but uncontrolled, continued and violent animosities."

Wilson added that a three-man executive might not be able to act quickly and decisively when necessary. By contrast, a single executive could move effectively to meet a crisis.

The majority decided to have a single chief executive, although three states voted against this motion—Maryland, Delaware, and New York. The expectation that George Washington would be chosen as the first Chief Executive calmed the fears of delegates who feared tyranny or monarchy. One delegate, Pierce Butler of South Carolina, wrote about the executive powers, in a letter to his son, "I do not believe they [the greater powers] would have been so great had not many of the members cast their eyes towards General Washington as President; and shaped their Ideas of the Powers to be given a President, by their opinions of his Virtue."

After deciding to have one chief executive, instead of three, the delegates argued about the manner of selecting him.

How Should the President Be Elected?

Gouverneur Morris of Pennsylvania started an argument by suggesting that all eligible voters in the United States should elect the President.

Roger Sherman of Connecticut disagreed. He wanted the Congress or national legislature to choose the President.

Morris said: "If the people should elect, they will never fail to prefer some man of distinguished character, or services. . . . If the Legislature elect, it will be the work of intrigue, of cabal, and of faction. . . ."

George Mason replied that "it would be as unnatural" to permit the people to elect a President, "as it would be to refer a trial of colors to a blind man."

Morris responded: "If the Legislature elect . . . it will be like the election of a pope by a conclave of cardinals."

Roger Sherman rebutted that "the sense of the nation would be better expressed by the Legislature, than by the people at large. The (people) will never be sufficiently informed (about the candidates) and beside will never give a majority of votes to any one man. They will generally vote for some man in their own state, and the largest state will have the best chance for the appointment."

Morris' proposal for popular election of the President was defeated. Only his own state of Pennsylvania supported it. This outcome was in line with election practices common to most of the states. At that time, only four of the thirteen states allowed eligible voters to select the chief executive or governor. In eight states, the executive was chosen by majority vote of the legislature. In Pennsylvania, there was an executive council of twelve men from whom one was chosen to be the chief executive.

At first Roger Sherman's motion—to have Congress select the President—was approved by a majority of the states. For a while, the majority seemed to agree with Sherman that the Congress should be able to control the President. The power of Congress to elect the President would establish conditions for "making him absolutely dependent on that body," said Sherman.

James Wilson and James Madison feared giving the Congress too much power over the President. They argued that such an arrangement would render the chief executive unable to act forcefully and independently as a national leader.

Madison urged the Convention to free the President from dependence on Congress. He said: "If it be a fundamental principle of free government that the Legislative, Executive, and Judiciary powers should be separately exercised, it is equally so that they be independently exercised."

Madison opposed both popular election and congressional election of the President. Instead, he and the majority at the Convention finally decided for selection of the President by an "Electoral College." Each state would appoint the same number of 'electors' to the Electoral College as it would send Senators and Representatives to Congress. These electors would meet and select a President. If no candidate gained a majority of votes, the House of Representatives would choose from among the top five.

How Long Should the President Serve?

A third critical decision about the presidency concerned the term of office. At first, the delegates voted to limit the President to one term of seven years. Many delegates considered seven years too long a term. At that time, ten states limited their chief executives to one-year terms. The other three states allowed three-year terms.

The delegates from Delaware proposed instituting a three-year term for the presidency and permitting any individual to win election up to three times. Thus, no President could serve longer than nine years.

Gouverneur Morris argued against making a President ineligible for re-election. He believed such a limitation would "destroy the great motive to good behavior, the hope of being rewarded by a reappointment."

George Mason responded that to impose no limits on re-election could result in "an Executive for life." It might prove impossible, without resorting to assassination, to remove a bad executive from power who had established himself in the office. Mason feared the development of a hereditary monarchy.

Impossible, replied Morris. He proposed impeachment as a means to remove a bad executive. The Convention agreed and voted to pass a motion that the executive "be removable on impeachment and conviction of malpractice or neglect of duty."

The delegates later approved a four-year term of office and imposed no restrictions on re-election.

Should the President Have the Veto Power?

Throughout the Convention, the delegates argued about exactly what powers the President should have. In particular, they debated vigorously about whether the President should have power to reject laws passed by Congress.

One part of the Virginia Plan called for a "Council of revision" (comprised of the President and members of the National Judiciary) empowered to veto legislation. This veto power would check the law-making power of Congress. James Madison backed this proposal, arguing that its adoption would not detract from the separation of powers among the three branches of government. Madison said that to have the executive and judiciary exercise the veto together "would by no means interfere with that independence so much to be approved and distinguished in the several departments."

John Dickinson of Delaware disagreed with Madison. He said that the judicial and executive branches should not join in the use of the veto power, "because the one is the expounder and the other the executor of the laws."

Elbridge Gerry of Massachusetts presented an alternative way to establish the veto power. He proposed "the the National Executive shall have a right to negative [veto] any legislative act. . . ."

Benjamin Franklin of Pennsylvania objected to giving one person power to veto a decision of the majority in Congress. He warned that a President could abuse this power to gain favors from members of Congress in exchange for agreeing to use, or not to use, the veto. He concluded that, "The Executive will be always increasing [its power] here, as elsewhere, till it ends in a monarchy."

Gouverneur Morris disagreed with all arguments against the creation of a strong executive invested with authority to veto legislation. "One great object of the Executive is to control the Legislature," said Morris. He continued:

> The Legislature will continually seek to aggrandize and perpetuate themselves; and will seize those critical moments produced by war, invasion or convulsion for that purpose. It is necessary then that the Executive Magistrate should be the guardian of the people, even of the lower classes, against Legislative tyranny, against the great and the wealthy who in the course of things will necessarily compose the Legislative body. . . . The Executive therefore ought to be so constituted as to be the great protector of the mass of the people.

At first Franklin's fears of a strong executive, with veto power, outweighed the arguments of Morris. Ten states voted against the proposal granting the President absolute veto power. However, over a two-month period, the delegates discussed alternative proposals about the veto power.

James Wilson revived Madison's idea of giving the veto to a "Council of revision" composed of the President and the judiciary.

Elbridge Gerry disagreed with Wilson's motion. He argued that such a collaboration would contribute to a "combining and mixing together" of executive and judicial branches. This "mixing together" would destroy the separation of powers among these two branches of government and lead them to jointly subjugate the legislative branch.

John Rutledge of South Carolina agreed with Gerry. He said: "Judges ought never to give their opinion on a law, till it comes before them (in court)."

Despite these objections to a veto exercised by a "Council of revision," the proposal almost became part of the Constitution. Four states opposed it, three favored it, and the split delegations of two states did not vote.

After rejection of his "Council of revision," James Madison suggested a veto power which two-thirds of both Houses of Congress could overrule. The Convention finally accepted this proposal. After two-and-a-half months of wrangling, the delegates found a way to include an executive veto power in the Constitution.

Making of the Presidency, 1787

The delegates at the Constitutional Convention made several additional decisions about the powers of the executive branch. For example, they granted the President power to appoint federal judges, ambassadors to other countries, and heads of executive departments. These appointments required the approval of two-thirds of the Senate. They also gave the President power to make treaties with other countries with the approval of two-thirds of the Senate. And the President served as commander-in-chief of the nation's armed forces.

The delegates created the office of Vice President to provide a successor in case the President died, resigned or otherwise was unable to carry out the duties of the Chief Executive. The Constitution specifies rules of eligibility for the offices of President and Vice President.

A description of the presidency appears in Article II of the Constitution. However, only the occupants of the executive office could give vitality and practical meaning to the words in Article II. From 1789 (when George Washington became the first President) until today, the Presidents of the United States have shaped the powers and duties of the executive office through their interpretations of the sections in Article II. Thus, the American presidency has grown and changed over the years within the framework provided by the Constitution.

Since the Constitutional Convention, many have admired the American presidency as an original institution. Political scientists have said that "the presidency is the most innovative and daring invention in the American political framework. It has been imitated, but never duplicated, by nations that have adopted constitutions since 1787."

EXERCISES FOR LESSON II-7

Reviewing Main Idea and Facts

1. Why did the delegates consider establishment of an effective executive office a main goal of the Constitutional Convention?
2. Why did the Convention decide to have one person as President instead of setting up a three-person executive office?
3. Why did the Convention decide against popular election of the President?
4. Why did the Convention decide against electing the President on the basis of direct universal suffrage?
5. (a) What decisions did the Convention make about the President's term of office and elegibility for re-election?
   (b) Why did the delegates prefer these decisions to the alternatives they rejected?
6. (a) What alternatives about a presidential veto power did the Convention consider?
   (b) Which alternative did they choose?
   (c) Why?
7. The framers of the Constitution wanted to create a strong executive. They also wanted to limit the power of the executive.
   (a) Why did they want to both grant and limit executive power?
   (b) List three of the several powers granted to the President?
   (c) List three of the several limitations on the President's power.

Interpreting Primary Sources

1. Refer to Article I, Section 7, and Article II of the U.S. Constitution to answer these questions about the presidency.
   (a) How old must a person be to be eligible for the presidency?
   (b) Are all citizens of the United States, who have reached a certain age, eligible to become President? Explain.
   (c) List two ways that a President may veto a law passed by Congress.
   (d) What powers of appointments does the President have?
   (e) What is the main idea of the presidential oath of office?
2. Four amendments to the Constitution have changed the presidency since 1787: Amendments 12, 20, 22, 25. Refer to these four amendments to answer the following questions.
   (a) Which amendment changed the number of times a President may win re-election? How?
   (b) Which amendment deals with succession to the presidency? What does it say?
   (c) Which amendment discusses filling a vacancy in the office of Vice President? What does it say?
3. Following are three statements about the presidency made by former Presidents. Read the quotations carefully and answer the questions below them.

> All see, and most admire, the glare which hovers round the external trappings of elevated office. To me there is nothing in it, beyond the lustre which may be reflected from its connection with a power of promoting human felicity. In our progress toward political happiness my station is new; and, if I may use the expression, I walk on untrodden ground. There is scarcely any part of my conduct which may not hereafter be drawn into precedent. Under such

a view of the duties inherent to my arduous office, I could not but feel a difference in myself on the one hand; and an anxiety for the community that every new arrangement should be made in the best possible manner on the other.

George Washington, January 9, 1790,
in a letter

To me there is something fine in the American theory that a private citizen can be chosen by the people to occupy a position as great as that of the mightiest monarch, and to exercise a power which may for the time being surpass that of Czar, Kaiser, or Pope, and that then, after having filled this position, the man shall leave it as an unpensioned private citizen, who goes back into the ranks of his fellow citizens with entire self-respect, claiming nothing save what on his own individual merits he is entitled to receive.

Theodore Roosevelt, October 1, 1911,
in a letter

Our Government is made up of the people. You are the Government. I am only your hired servant. I am the Chief Executive of the greatest nation in the world, the highest honor that can ever come to a man on earth. But I am the servant of the people of the United States. They are not my servants. I can't order you around, or send you to labor camps, or have your heads cut off if you don't agree with me politically.

Harry S. Truman, September 26, 1948,
in a speech at San Antonio, Texas

(a) What did Washington say about his unique opportunity to shape the presidency? Why did he have this opportunity?

(b) Theodore Roosevelt compared the power of the presidency to the power of a monarchy. In what ways might the office of President, at times, be similar to that of a monarchy?

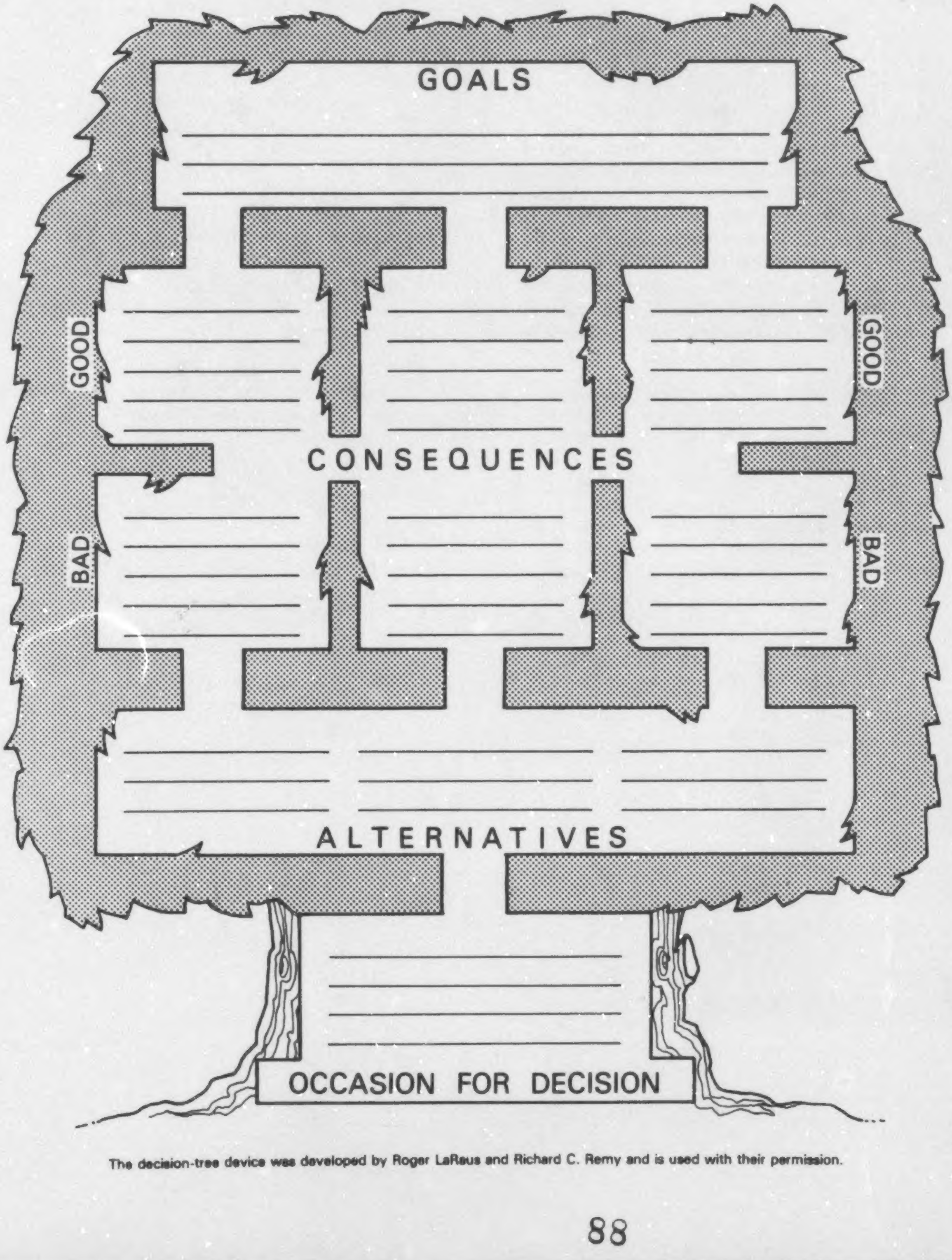
(c) According to Roosevelt and Truman, how is the presidency unlike a monarchy?

Decision-Making Skills

Use the decison tree on the next page to help you answer these questions.

1. Select **one** among the four occasions for decision about the presidency, which are highlighted in this lesson.
2. What alternatives associated with this decision does the case study on pages 75-78 describe? Can you think of other alternatives that the delegates might have considered?
3. List the likely consequences—both positive and negative—of each alternative?
4. What important goals and/or values of the delegates were relevant to this occasion for decision? What did the delegates want to achieve and avoid in this situation?
5. What choice did the delegates make in response to this occasion for decision?
6. Was this a good decision? Explain.

DECISION TREE


GOALS
GOOD
GOOD
CONSEQUENCES
BAD
BAD
ALTERNATIVES
OCCASION FOR DECISION

The decision-tree device was developed by Roger LaRaus and Richard C. Remy and is used with their permission.

II-8. IDEAS FROM THE FEDERALIST PAPERS

LESSON PLAN AND NOTES FOR TEACHERS

Preview of Main Points

This lesson is about major ideas of the Federalists, which are presented in five of *The Federalist* papers, Numbers 15, 39, 51, 70, 78. Students are guided in their analysis of these ideas.

Connection to Textbooks

Standard high school textbooks in American history and government mention *The Federalist* papers. However, they do not provide opportunities for analysis of ideas in these essays.

Objectives

Students are expected to:

1. Identify main ideas in five of *The Federalist* papers.
2. Know the Federalist views about weaknesses of government under the Articles of Confederation.
3. Know Federalist ideas about characteristics of a good government.
4. Distinguish ideas of the Federalists in comparison with the ideas of their opponents.

Suggestions for Teaching the Lesson

This lesson requires careful examination and interpretation of ideas. It is based on questions designed to guide student analysis and discussion of ideas from five of *The Federalist* papers. Teachers may ask all students to examine ideas from five *Federalist* papers, which appear in this lesson, or teachers may wish to divide the class into five groups. Each group could examine and discuss one of the five *Federalist* papers.

Opening the Lesson

- Tell students about *The Federalist* papers—who wrote them, when, why, and with what consequences.
- Inform students of the main points of this lesson.
- Assign students the task of examining one or more of five *Federalist* papers in terms of the study questions in this lesson.

Developing the Lesson

- Distribute copies of one or more of five *Federalist* papers to students. In addition, distribute the study guide questions that appear at the end of this lesson.
- Have students examine and interpret ideas in these *Federalist* papers in terms of the study guide questions in this lesson.
- Have students work individually or in small groups. One option for doing this lesson is to assign one of the five *Federalist* papers to each of five sub-groups of your class.

Concluding the Lesson

- Have individuals or representatives of sub-groups report about their analysis of the five *Federalist* papers.
- Encourage students to exchange ideas and to react critically to the ideas of one another.
- Conclude the lesson with the activity on the last page of the student material, which requires students to identify ideas of the Federalists in a list of alternative viewpoints about constitutional government.

Suggested Reading

Fairfield, Roy P. ed. *The Federalist.* Baltimore: The Johns Hopkins University Press, 1981. The editor has selected and abridged essays written in support of the Constitution in 1787 and 1788 by Alexander Hamilton, James Madison, and John Jay.

Rozwenc, Edwin C., and Frederick E. Bauer eds. *Liberty and Power in the Making of the Constitution.* Boston: D.C. Heath and Company, 1963. A book of edited primary sources highlights differences between the Federalists and Antifederalists. This book was designed for use by high school students.

ANSWERS TO IDENTIFICATION ACTIVITY

_X_ 1. Alexander Hamilton, *The Federalist,* #23, 1788.

_X_ 2. Alexander Hamilton, *The Federalist,* #23, 1788.

_X_ 3. Alexander Hamilton, *The Federalist,* #70, 1788.

___ 4. Patrick Henry, Delegate to the Virginia Ratifying Convention, 1788.

_X_ 5. John Jay, *The Federalist,* #2, 1787.

_X_ 6. James Madison, *The Federalist,* #51, 1788.

___ 7. Patrick Henry, Delegate to the Virginia Ratifying Convention, 1788.

___ 8. A Pennsylvania Farmer, *Freeman's Journal,* April 1788.

II-8. IDEAS FROM *THE FEDERALIST* PAPERS

Arguments about the Constitution started soon after the delegates to the Philadelphia convention submitted it to Congress. Opponents of the Constitution were called **Antifederalists.** The supporters were known as **Federalists.**

The Federalist, a collection of eighty-five newspaper articles, contain the most significant writings in support of the Constitution. These papers countered the arguments of the Antifederalists, who advised citizens to reject the Constitution.

Alexander Hamilton worried that the ratifying convention of New York would vote against the Constitution. Governor George Clinton, the powerful leader of the Antifederalists in New York, wrote persuasive newspaper articles against the Federalist cause. Hamilton decided to answer him. Thus, he began to write *The Federalist* in response to Clinton.

From October 1787 until May 1788, Hamilton wrote fifty-one of *The Federalist* essays. James Madison wrote twenty-nine of them, collaborating with Hamilton on some of them. John Jay, forced to withdraw from the project by illness, wrote five of *The Federalist* essays.

The Federalist appeared first in New York newspapers. Newspapers throughout the nation reprinted many of them. These three authors signed all their articles with a pen name, Publius.

Many recognized the significance of *The Federalist* soon after they were published. Thomas Jefferson, for example, wrote to James Madison and described *The Federalist* as "the best commentary on the principles of government. . .ever written."

George Washington said: "When the transient circumstances and fugitive performances which attended the crises shall have disappeared, the Work will merit the notice of posterity; because in it are candidly and ably discussed the principles of freedom and topics of government, which will be always interesting to mankind so long as they shall be connected in civil society."

Excerpts from five of the eighty-five papers collected to comprise *The Federalist* follow. The portions presented here represent excerpts from 15, 39 51, 70, and 78.

In **#15,** Hamilton discussed various defects of government under the Articles of Confederation. He noted a primary fault of the articles is the emphasis they place on "the principle of legislation for States in their corporate or collected capacities" instead of on "the individuals of which they consist."

In **#39**, Madison discussed the meaning of a federal republic. He concluded that, "The proposed Constitution is. . .neither a national nor a federal constitution, but a composition of both."

In **#51,** Madison discussed the constitutional principle of separation of powers. He demonstrated that the Constitution grants sufficient power to the government to satisfy public needs. It also limits the power in order to protect civil liberties.

In **#70,** Hamilton discussed the powers and duties of the President under the Constitution. He argued for a vigorous Chief Executive.

In **#78,** Hamilton defended the power of judicial review as a basic principle of the Constitution.

THE FEDERALIST, #15 (Hamilton)

To the People of the State of New York:

. . .We may indeed, with propriety, be said to have reached almost the last stage of national humiliation. There is scarcely anything that can wound the pride, or degrade the character, of an independent people, which we do not experience. Are there engagements, to the performance of which we are held by every tie respectable among men? These are the subjects of constant and unblushing violation. Do we owe debts to foreigners, and to our own citizens, contracted in a time of imminent peril, for the preservation of our political existence? These remain without any proper or satisfactory provision for their discharge. Have we valuable territories and important posts in the possession of a foreign power, which, by express stipulations, ought long since to have been surrendered? These are still retained, to the prejudice of our interest not less than of our rights. Are we in a condition to resent, or to repel the aggression? We have neither troops, nor treasury, nor government. Are we even in a condition to remonstrate with dignity. The just imputations on our own faith, in respect to the same treaty, ought first to be removed. Are we entitled, by nature and compact, to a free participation in the navigation of the Mississippi? Spain excludes us from it. Is public credit an indispensable resource in time of public danger? We seem to have abandoned its cause as desperate and irretrievable. Is commerce of importance to national wealth? Ours is at the lowest point of declension. Is respectability in the eyes of foreign powers a safeguard against foreign encroachments? The imbecility of our government even forbids them to treat with us: Our ambassadors abroad are the mere pageants of mimic sovereignty. Is a violent and unnatural decrease in the value of land, a symptom of national distress? The price of improved land, in most parts of the country, is much lower than can be accounted for by the quantity of waste land at market, and can only be fully explained by that want of private and public confidence, which are so alarmingly prevalent among all ranks, and which have a direct tendency to depreciate property of every kind. Is private credit the friend and patron of industry? That most useful kind which relates to borrowing and lending, is reduced within the narrowest limits, and this still more from an opinion of insecurity than from a scarcity of money. To shorten an enumeration of particulars which can afford neither pleasure nor instruction, it may in general be demanded, what indication is there of national disorder, poverty, and insignificance, that could befall a community so peculiarly blessed with natural advantages as we are, which does not form a part of the dark catalogue of our public misfortunes?

This is the melancholy situation to which we have been brought by those very maxims and counsels, which would now deter us from adopting the proposed constitution;...

The great, and radical vice, in the construction of the existing confederation, is in the principle of LEGISLATION for STATES or GOVERNMENTS, in their CORPORATE or COLLECTIVE CAPACITIES, and as contra-distinguished from the INDIVIDUALS of whom they consist. . . .

The consequence of this is, that, though in theory, their resolutions concerning those objects are laws, constitutionally binding on the members of the union, yet, in practice, they are mere recommendations, which the states observe or disregard at their option. . . .

There is nothing absurd or impracticable, in the idea of a league or alliance between independent nations, for certain defined purposes precisely stated in a treaty; regulating all the details of time, place, circumstance, and quantity; leaving nothing to future discretion; and depending for its execution on the good faith of the parties. Compacts of this kind exist among all civilized nations, subject to the usual vicissitudes of peace and war; of observance and non-observance, as the interests or passions of the contracting powers dictate. . . .

If the particular states in this country are disposed to stand in a similar relation to each other, and to drop the project of a general DISCRETIONARY SUPERINTENDENCE, the scheme would indeed be pernicious, and would entail upon us all the mischiefs that have been enumerated under the first head; but it would have the merit of being, at least, consistent and practicable. Abandoning all views towards a confederate government, this would bring us to a simple alliance, offensive and defensive; and would place us in a situation to be alternately friends and enemies of each other, as our mutual jealousies and rivalships, nourished by the intrigues of foreign nations, should prescribe to us.

But if we are unwilling to be placed in this perilous situation; if we still adhere to the design of a national government, or, which is the same thing, of a superintending power, under the direction of a common council, we must resolve to incorporate into our plan those ingredients which may be considered as forming the characteristic difference between a league and a government; we must extend the authority of the union to the persons of the citizens—the only proper objects of government. . . .

In our case, the concurrence of thirteen distinct sovereign wills is requisite under the confederation, to the complete execution of every important measure, that proceeds from the union. . . . Each state, yielding to the persuasive voice of immediate interest or convenience, has successively withdrawn its support, till the frail and tottering edifice seems ready to fall upon our heads and to crush us beneath its ruins.

—PUBLIUS

THE FEDERALIST, #39 (Madison)

To the People of the State of New York:

. . . If we resort for a criterion to the different principles on which different forms of government are established, we may define a republic to be, or at least may bestow that name on, a government which derives all its powers directly or indirectly from the great body of the people, and is administered by persons holding their offices during pleasure, for a limited period, or during good behavior. It is **essential** to such a government that it be derived from the great body of the society, not from an inconsiderable proportion, or a favored class of it; otherwise a handful of tyrannical nobles, exercising their oppressions by a delegation of their powers, might aspire to the rank of republicans and claim for their government the honorable title of republic. It is **sufficient** for such a government that the persons administering it be appointed, either directly or indirectly, by the people; and that they hold their appointments by either of the tenures just specified; otherwise every government in the United States, as well as every other popular government that has been or can be well organized or well executed, would be degraded from the republican character. According to the constitution of every state in the Union, some or other of the officers of government are appointed indirectly only by the people. According to most of them, the chief magistrate himself is so appointed. And according to one, this mode of appointment is extended to one of the coordinate branches of the legislature. According to all the constitutions, also, the tenure of the highest offices is extended to a definite period, and in many instances, both within the legislative and executive departments, to a period of years. According to the provisions of most of the constitutions, again, as well as according to the most respectable and received opinions on the subject, the members of the judiciary department are to retain their offices by the firm tenure of good behavior.

On comparing the Constitution planned by the convention with the standard here fixed, we perceive at once that it is, in the most rigid sense, conformable to it. . . .

Could any further proof be required of the republican complexion of this system, the most decisive one might be found in its absolute prohibition of titles of nobility. . . and in its express guaranty of the republican form to each of [the states].

"But it was not sufficient," say the adversaries of the proposed Constitution, "for the convention to adhere to the republican form. They ought, with equal care, to have preserved the **federal** form, which regards the Union as a **Confederacy** of sovereign states; instead of which, they have framed a **national** government, which regards the Union as a **consolidation** of the States. . . ."

. . . the government . . . appears to be of a mixed character, presenting at least as many **federal** as **national** features.

The difference between a federal and national government, as it relates to the **operation of the government**, is . . . supposed to consist in this, that in the former the powers operate on the political bodies composing the Confederacy in their political capacities; in the latter, on the individual citizens composing the nation in their individual capacities. On trying the Constitution by this criterion, it falls under the **national**, not the **federal** character; though perhaps not so completely as has been understood. In several cases, and particularly in the trial of controversies to which States may be parties, they must be viewed and proceeded against in their collective and political capacities only. But the operation of the government on the people, in their individual capacities, in its ordinary and most essential proceedings, will . . . on the whole designate it in this relation, a **national** government.

But if the government be national with regard to the **operation** of its powers, it changes its aspect again when we contemplate it in relation to the extent of its powers. The idea of a national government involves in it, not only an authority over the individual citizens, but an indefinite supremacy over all persons and things, so far as they are objects of lawful government. Among a people consolidated into one nation, this supremacy is completely vested in the national legislature. Among communities united for particular purposes, it is vested partly in the general and partly in the municipal legislatures. In the former case, all local authorities are subordinate to the supreme; and may be controlled, directed, or abolished by it at pleasure. In the latter, the local or municipal authorities form distinct and independent portions of the supremacy, no more subject within their respective spheres to the general authority, than the general authority is subject to them within its own sphere. In this relation, then, the proposed government cannot be deemed a **national** one; since its jurisdiction extends to certain enumerated objects only, and leaves to the several States a residuary and inviolable sovereignty over all other objects. It is true that in controversies relating to the boundary between the two jurisdictions, the tribunal which is ultimately to decide, is to be established under the general government. But this does not change the principle of the case. The decision is to be impartially made, according to the rules of the Constitution; and all the usual and most effectual precautions are taken to secure this impartiality. Some such tribunal is clearly essential to prevent an appeal to the sword and a dissolution of the compact; and that it ought to be established under the general rather than under the local governments, or, to speak more properly, that it could be safely established under the first alone, is a position not likely to be combated. . . .

The proposed Constitution, therefore . . . is, in strictness, neither a national nor a federal Constitution, but a composition of both. In its foundation it is federal, not national; in the sources from which the ordinary powers of the government are drawn, it is partly federal and partly national; in the operation of these powers, it is national, not federal; in the extent of them, again, it is federal, not national; and, finally, in the authoritative mode of introducing amendments, it is neither wholly federal nor wholly national.

—PUBLIUS

THE FEDERALIST, #51 (Madison)

To the People of the State of New York:

To what expedient, then, shall we finally resort for maintaining in practice the necessary partition of power among the several departments as laid down in the Constitution? The only answer that can be given is that . . . the defect must be supplied by so contriving the interior structure of the government as that its several constituent parts may, by their mutual relations, be the means of keeping each other in their proper places. . . .

. . . the great security against a gradual concentration of the several powers in the same department, consists in giving to those who administer each department the necessary constitutional means and personal motives to resist encroachment of the others. The provision for defence must in this, as in all other cases, be made commensurate to the danger of attack. Ambition must be made to counteract ambition. The interest of the man must be connected with the constitutional rights of the place. It may be a reflection on human nature, that such devices should be necessary to control the abuses of government. But what is government itself, but the greatest of all reflections on human nature? If men were angels, no government would be necessary. If angels were to govern men, neither external nor internal controls on government would be necessary. In framing a government which is to be administered by men over men, the great difficulty lies in this: you must first enable the government to control the governed; and in the next place oblige it to control itself. A dependence on the people is, no doubt, the primary control on the government; but experience has taught mankind the necessity of auxiliary precautions. . . .

There are, moreover, two considerations particularly applicable to the federal system of America, which place that system in a very interesting point of view.

First. In a single republic, all the power surrendered by the people is submitted to the administration of a single government; and the usurpations are guarded against by a division of the government into distinct and separate departments. In the compound republic of America, the power surrendered by the people is first divided between two distinct governments, and then the portion allotted to each subdivided among distinct and separate departments. Hence a double security arises to the rights of the people. The different governments will control each other, at the same time that each will be controlled by itself.

Second. It is the great importance in a republic not only to guard the society against the oppression of its rulers, but to guard one part of the society against the injustice of the other part. Different interests necessarily exist in different classes of citizens. If a majority be united by a common interest, the rights of the minority will be insecure. There are but two methods of providing against this evil: the one by creating a will in the community independent of the majority—that is, of the society itself; the other by comprehending in the society so many separate descriptions of citizens as will render an unjust combination of a majority of the whole very improbable, if not impracticable. The first method prevails in all governments possessing an hereditary or self-appointed authority. This, at best, is but a precarious security; because a power independent of the society may as well espouse the unjust views of the major, as the rightful interest of the minor party, and may possibly be turned against both parties. The second method will be exemplified in the federal republic of the United States. Whilst all authority in it will be derived from and dependent of the society, the society itself will be broken into so many parts, interests, and classes of citizens, that the rights of individuals or of the minority will be in little danger from interested combinations of the majority. In a free government the security for civil rights must be the same as that for religious rights. It consists in the one case in the multiplicity of interests and in the other in the multiplicity of sects. The degree of security in both cases will depend on the number of interests and sects; and this may be presumed to depend on the extent of country and number of people comprehended under the same government. This view of the subject must particularly recommend a proper federal system to all the sincere and considerate friends of republican government, since it shows that in exact proportion as the territory of the Union may be formed into more circumscribed Confederacies or States, oppressive combinations of a majority will be facilitated; the best security under the republican forms for the rights of every class of citizens will be diminished; and consequently the stability and independence of some member of the government, the only other security, must be proportionally increased. Justice is the end of government. It is the end of civil society. It ever has been and ever will be pursued until it be obtained, or until liberty be lost in the pursuit. In a society under the forms of which the stronger faction can readily unite and oppress the weaker, anarchy may as truly be said to reign as in a state of nature, where the weaker individual is not secured against the violence of the stronger; and, as in the latter state even the stronger individuals are prompted, by the uncertainty of their condition, to submit to a government which may protect the weak as well as themselves; so, in the former state will the more powerful factions or parties be gradually induced, by a like motive, to wish for a government which will protect all parties, the weaker as well as the more powerful. . . .

—PUBLIUS

THE FEDERALIST, #70 (Hamilton)

To the people of the State of New York:

There is an idea, which is not without its advocates, that a vigorous Executive is inconsistent with the genius of republican government. The enlightened well-wishers to this species of government must at least hope that the supposition is destitute of foundation, since they can never admit its truth without at the same time admitting the condemnation of their own principles. Energy in the Executive is a leading character in the definition of good government. It is essential to the protection of the community against foreign attacks; it is not less essential to the steady administration of the laws; to the protection of property against those irregular and high-handed combinations which sometimes interrupt the ordinary course of justice; to the security of liberty against the enterprises and assaults of ambition, of faction, and of anarchy. Every man the least conversant in Roman history, knows how often that republic was obliged to take refuge in the absolute power of a single man under the formidable title of Dictator—as well against the intrigues of ambitious individuals who aspired to the tyranny, and the seditions of whole classes of the community whose conduct threatened the existence of all government, as against the invasions of external enemies who menaced the conquest and destruction of Rome.

There can be no need, however, to multiply arguments or examples on this head. A feeble Executive implies a feeble execution of the government. A feeble execution is but another phrase for a bad execution; and a government ill executed, whatever it may be in theory, must be, in practice, a bad government.

Taking it for granted, therefore, that all men of sense will agree in the necessity of an energetic Executive, it will only remain to inquire what are the ingredients which constitute this energy? How far can they be combined with those other ingredients which constitute safety in the republican sense? And how far does this combination characterize the plan which has been reported by the convention?

The ingredients which constitute energy in the Executive are, first, unity; secondly, duration; thirdly, an adequate provision for its support; fourthly, competent powers.

The ingredients which constitute safety in the republican sense are a due dependence on the people, and a due responsibility.

Those politicians and statesmen who have been the most celebrated for the soundness of their principles and for the justice of their views have declared in favor of a single Executive and a numerous legislature. They have, with great propriety, considered energy as the most necessary qualification of the former, and have regarded this as most applicable to power in a single hand; while they have with equal propriety considered the latter as best adapted to deliberation and wisdom, and best calculated to conciliate the confidence of the people and to secure their privileges and interests.

That unity is conducive in energy will not be disputed. Decision, activity, secrecy, and dispatch will generally characterize the proceedings of one man in a much more eminent degree than the proceedings of any greater number; and in proportion as the number is increased, these qualities will be diminished. . . .

—PUBLIUS

THE FEDERALIST, #78 (Hamilton)

To the People of the State of New York:

We proceed now to an examination of the judiciary department of the proposed government. . . .

The complete independence of the courts of justice is peculiarly essential in a limited Constitution. By a limited Constitution, I understand one which contains certain specified exceptions to the legislative authority; such, for instance, as that it shall pass no bills of attainder, no *ex post-facto* laws, and the like. Limitations of this kind can be preserved in practice no other way than through the medium of courts of justice, whose duty it must be to declare all acts contrary to the manifest tenor of the Constitution void. Without this, all the reservations of particular rights or privileges would amount to nothing. . . .

There is no position which depends on clearer principles than that every act of a delegated authority, contrary to the tenor of the commission under which it is exercised, is void. No legislative act, therefore, contrary to the Constitution, can be valid. To deny this would be to affirm that the deputy is greater than his principal; that the servant is above his master; that the representatives of the people are superior to the people themselves; that men acting by virtue of powers may do not only what their powers do not authorize, but what they forbid. . . .

. . .The interpretation of the laws is the proper and peculiar province of the courts. A constitution is, in fact, and must be regarded by the judges, as a fundamental law. It therefore belongs to them to ascertain its meaning, as well as the meaning of any particular act proceeding from the legislative body. If there should happen to be an irreconcilable variance between the two, that which has the superior obligation and validity ought, of course, to be preferred; or, in other words, the Constitution ought to be preferred to the statute, the intention of the people to the intention of their agents. . . .

. . .whenever a particular statute contravenes the Constitution, it will be the duty of the judicial tribunals to adhere to the latter and disregard the former. . . .

If, then the courts of justice are to be considered as the bulwarks of a limited Constitution against legislative encroachments, this consideration will afford a strong argument for the permanent tenure of judicial offices, since nothing will contribute so much as this to that independent spirit in the judges which must be essential to the faithful performance of so arduous a duty. . . .

—PUBLIUS

EXERCISES FOR LESSON II-8

Following are questions that can be used to guide analysis of the ideas in five of the essays from *The Federalist:* Numbers 15, 39, 51, 70, and 78.

A. The Federalist, #15 (Hamilton)

1. List at least **three** weaknesses of government under the Article of Confederation that are discussed in paper #15.
2. According the Hamilton, what is the main difference between a "league of states" and an effective national government?

B. The Federalist, #39 (Madison)

1. How does Madison define a republic?
2. According to Madison's definition, did the Constitution establish a republican form of government? Explain.
3. Which of the following statements reflect Madison's views? Explain your choice.
   a. The Constitution establishes a confederacy of sovereign states.
   b. The Constitution provides for a consolidation (merger) of the states under one supreme national government.
   c. The Constitution creates a federal system in which the state governments retain power to accept or reject laws of the federal government.
   d. The Constitution establishes a union of states which includes both federal and national features.

C. The Federalist, #51 (Madison)

1. How does the Constitution divide or separate government in the federal republic of the United States?
   a. Between one federal (national) government and several state governments.
   b. Among three departments of the federal government—the executive, the legislative, and the judicial.
   c. Both "a" and "b" are correct.
   d. Neither "a" nor "b" is correct.
2. Madison says: "If a majority be united by a common interest, the rights of the minority will be insecure." Why does Madison say that majority rule could destroy the rights of minorities?
3. How does Madison propose to protect the rights of minorities against tyranny by the majority?
4. Would Madison have agreed with this proposition: Government must be strong enough to protect the rights and liberties of citizens, but not strong enough to suppress those civil rights and liberties. Explain.
5. Did Madison believe that citizens could lose their rights and liberties if government were too weak? Explain.
6. Which of these statements reflect Madison's views?
   a. A government should have sufficient power to control citizens who live under it.
   b. Sufficient limitations on a government's power should safeguard the rights and liberties of citizens.
   c. Both "a" and "b" are correct.
   d. Neither "a" nor "b" is correct.

D. The Federalist, #70 (Hamilton)

1. What advice does Hamilton offer about the executive branch of government?
2. According to Hamilton, what are three positive outcomes of following his advice about the executive branch of government?
3. List three negative consequences anticipated by Hamilton of not following his advice.

E. The Federalist, #78 (Hamilton)

1. According to Hamilton, the supreme law of the land should be:
   a. Laws passed by state governments.
   b. Laws passed by Congress.
   c. Decisions of the Chief Executive.
   d. The Constitution of the United States.
2. What main duty does the Constitution delegate to judges?
   a. To make laws.
   b. To enforce laws.
   c. To use the Constitution as the basis for deciding cases in courts of law.
   d. To decide cases in courts of law according to the wishes of a majority of the people.
3. What did Hamilton expect judges to do with a law passed by Congress that violates the Constitution?
4. How can judges in courts of law protect the rights of minorities against tyranny by the majority?
5. How can judges in courts of law protect the rights of a majority of citizens against oppression by a ruler or a small group of rulers?

F. Identifying Federalist Ideas

A list of statements made during the debates about ratification of the Constitution follows. Identify the statements that represent the Federalist position. Place an "X" in the space next to each Federalist statement. Be prepared to explain your responses.

____ 1. . . . the absurdity must continually stare us in the face of confiding to a government the direction of the most essential national interests, without daring to trust it to the authorities which are indispensable to their proper and efficient management.

____ 2. . . . a federal government . . . ought to be clothed with all the powers requisite to complete execution of its trust.

____ 3. Energy in the Executive is a leading character in the definition of good government.

____ 4. We are now fixing a national consolidation. This . . . is big with mischiefs.

____ 5. This country should never be split into a number of unsocial, jealous, and alien sovereignties.

____ 6. If a majority be united by a common interest, the rights of the minority will be insecure. . . . In a society under the forms of which the stronger faction can readily unite and oppress the weaker, anarchy may as truly be said to reign as in a state of nature where the weaker individual is not secured against the violence of the stronger.

____ 7. States are the characteristics and the soul of a confederation. If the States be not the agents of this compact, it must be one great consolidated National Government of the people of all the States.

____ 8. The states should respectively have laws, courts, force, and revenues of their own sufficient for their own security; they ought to be fit to keep house alone if necessary; if this be not the case, or so far as it ceases to be so, it is a departure from a federal to a consolidated government. . . .

II-9. IDEAS FROM PAPERS OF THE ANTIFEDERALISTS

LESSON PLAN AND NOTES FOR TEACHERS

Preview of Main Points

This lesson is about main ideas of the Antifederalists, which are presented in five papers. Students are guided in their analysis of these ideas.

Connection to Textbooks

Standard high school textbooks in American history and government mention ideas of the Antifederalists. However, these ideas are not discussed in detail. Furthermore, students are not provided with opportunities to analyze these ideas.

Objectives

Students are expected to:

1. Identify main ideas in six of the Antifederalist papers.
2. Know the Antifederalist views about dangers associated with the Constitution of 1787.
3. Know Antifederalist views about characteristics of a good government.
4. Know Antifederalist ideas about how best to protect civil rights and liberties.
5. Distinguish ideas of the Antifederalists from those of the Federalists.

Suggestions for Teaching the Lesson

This lesson requires careful examination and interpretation of ideas. It is based on questions designed to guide student analysis and discussion of ideas from six papers of the Antifederalists. Teachers may ask all students to examine ideas from six Antifederalist papers, which appear in this lesson. Or teachers may wish to divide the class into six groups. Each group could examine and discuss one of the six Antifederalist papers.

Opening the Lesson

- Tell students about the Antifederalist papers—who wrote them, when, why, and with what consequences.
- Inform students of the main points of the lesson.
- Assign students the task of examining one or more of the six Antifederalist papers in terms of the student questions in this lesson.

Developing the Lesson

- Distribute copies of one or more of six Antifederalist papers to students. In addition, distribute the study guide questions that appear at the end of the lesson.
- Have students examine and interpret ideas in these Antifederalist papers in terms of the study guide questions in this lesson.
- Have students work individually or in small groups. One option for doing this lesson is to assign one of the six Antifederalist papers to each of six sub-groups of your class.

Concluding the Lesson

- Have individuals or representatives of sub-groups report about their analyses of the six Antifederalist papers.
- Encourage students to exchange ideas and to react critically to the ideas of one another.
- Conclude the lesson with the activity on the last page of the student material, which requires students to identify ideas of the Antifederalists in a list of alternative viewpoints about constitutional government.

Suggested Reading

Schrag, Peter, and Van R. Halsy, eds. *The Ratification of the Constitution and the Bill of Rights.* Boston: D.C. Heath and Company, 1964. This is a book of edited primary sources about the clashing ideas of Federalists and Antifederalists. It was designed for use by high school students.

Storing, Herbert J. *What the Anti-Federalists Were For.* Chicago: The University of Chicago Press, 1981. This volume presents the political thought of the opponents of the Constitution.

ANSWERS TO IDENTIFICATION ACTIVITY, ITEM F

____ 1. Representative James Jackson of Georgia in the First Congress, June 1789.

X 2. Agrippa, pseudonym of an Antifederalist writer, 1788.

X 3. George Clinton, Governor of New York, 1787.

____ 4. Alexander Hamilton, *The Federalist*, #1, 1787.

____ 5. Arguments of a Federalist, *Virginia Independent Chronicle*, March 12, 1788.

X 6. Patrick Henry, speech at the Virginia Ratifying Convention, April, 1788.

X 7. Former Revolutionary War general, in speech before Massachusetts Ratifying Convention, January 25, 1788.

II-9. IDEAS FROM PAPERS OF THE ANTIFEDERALISTS

Antifederalists criticized the Constitution of 1787 and urged its rejection. Some of them, however, were willing to accept the Constitution upon condition that a Bill of Rights be added to it.

The Antifederalists wrote newspaper articles and made speeches in defense of their position, as did their opponents, the Federalists. Unlike the authors of *The Federalist,* who planned and wrote as collaborators, the Antifederalists wrote in an uncoordinated and sporadic fashion. *The Federalist* appeared as a collection a short time after the publication of the essays in newspapers. By contrast, large collections of Antifederalist writings did not appear until much later.

The following excerpts from six articles, pamphlets, and speeches by men opposed to the ratification of the Constitution illustrate the Antifederalist position. Someone who called himself "the Federal Farmer" anonymously wrote the first, Melancton Smith of New York the second, George Clinton of New York the third, Joshua Atherton of New Hampshire the fourth, William Lenoir of North Carolina the fifth, and Patrick Henry of Virginia the sixth.

The "Letters from the Federal Farmer" were printed in pamphlet form and thousands of copies were sold in 1787 and 1788. The full title read "Observations Leading to a Fair Examination of the System of Government Proposed by the Late Convention...in a Number of Letters from the Federal Farmer to the Republican." The "Letters" made some of the most important and persuasive Antifederalist statements circulated during the ratification contest. Although for many years historians believed that a leading Virginia politician, Richard Henry Lee, wrote the "Letters," the true identity of the author remains unknown.

Melancton Smith, a delegate to the New York ratifying convention, argued against the Constitution. However, he finally voted to ratify it when the Convention moved to add a Bill of Rights.

George Clinton, Governor of New York, also an Antifederalist delegate at the New York convention, wrote newspaper articles against ratification under the pen name of Cato. Alexander Hamilton began writing *The Federalist* in response to Clinton's essays.

Joshua Atherton served as a delegate to the New Hampshire ratifying convention. Sympathetic to the goal of a strong national government, Atherton might have voted for the new constitution. But he found the document immoral. Atherton believed that by allowing the slave trade to continue for at least twenty more years the Constitution morally tainted itself and the nation it was creating.

William Lenoir proved an outspoken critic of the Constitution as a delegate to the North Carolina ratifying convention.

Patrick Henry, the famous patriot in the War of Independence, strongly opposed the Constitution. He spoke against it at the Virginia ratifying convention.

RIGHTS OF CITIZENS MUST BE PRESERVED*

"The Federal Farmer"

I still believe a complete federal bill of rights to be very practicable. . . . It is in connection with these, and other solid principles, we are to examine the constitution. It is not a few democratic phrases, or a few well formed features, that will prove its merits; or a few small omissions that will produce its rejection among men of sense; they will enquire what are the essential powers in a community, and what are nominal ones; where and how the essential powers shall be lodged to secure government, and to secure true liberty.

In examining the proposed constitution carefully, we must clearly perceive an unnatural separation of these powers from the substantial representation of the people. . . .

[A]s to powers, the general government will possess all essential ones, at least on paper, and those of the states a mere shadow of power. And therefore, unless the people shall make some great exertions to restore to the state governments their powers in matters of internal police; as the powers to lay and collect, exclusively, internal taxes, to govern the militia, and to hold the decisions of their own judicial courts upon their own laws final, the balance cannot possibly continue long; but the state governments must be annihilated, or continue to exist for no purpose.

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*Herbert J. Storing, ed., *The Complete Anti-Federalist.* 7 vols. Chicago: University of Chicago Press, 1981, V. 2, 232-233.

PRESENTATION OF CITIZENS IN GOVERNMENT*

(Melancton Smith)

To determine whether the number of representatives proposed by this Constitution is sufficient, it is proper to examine the qualifications which this house ought to possess, in order to exercise their power discreetly for the happiness of the people. The idea that naturally suggests itself to our minds, when we speak of representatives, is, that they resemble those they represent. They should be a true picture of the people, possess a knowledge of their circumstances and their wants, sympathize in all their distresses, and be disposed to seek their true interests. The knowledge necessary for the representative of a free people not only comprehends extensive political and commercial information, such as is acquired by men of refined education, who have leisure to attain to high degrees of improvement, but it should also comprehend that kind of acquaintance with the common concerns and occupations of the people, which men of the middling class of life are, in general, more competent to than those of a superior class. To understand the true commercial interests of a country, not only requires just ideas of the general commerce of the world, but also, and principally, a knowledge of the productions of your own country, and their value, what your soil is capable of producing, the nature of your manufactures, and the capacity of the country to increase both. To exercise the power of laying taxes, duties, and exercises, with discretion, requires something more than an acquaintance with the abstruse parts of the system of finance. It calls for a knowledge of the circumstances and ability of the people in general—a discernment how the burdens imposed will bear upon the different classes.

From these observations results this conclusion—that the number of representatives should be so large, as that, while it embraces the men of the first class, it should admit those of the middling class of life. I am convinced that this government is so constituted that the representatives will generally be composed of the first class in the community, which I shall distinguish by the name of the **natural aristocracy** of the country. . . .

From these remarks, it appears that the government will fall into the hands of the few and the great. This will be a government of oppression.

. . . A system of corruption is known to be the system of government in Europe. It is practised without blushing; and we may lay it to our account, it will be attempted amongst us. The most effectual as well as natural security against this is a strong democratic branch in the legislature, frequently chosen, including in it a number of the substantial, sensible yeomanry of the country. Does the House of Representatives answer this description? I confess, to me they hardly wear the complexion of a democratic branch; they appear the mere shadow of representation. The whole number, in both houses, amounts to ninety-one; of these forty-six make a quorum; and twenty-four of those, being secured, may carry any point. Can the liberties of three millions of people be securely trusted in the hands of twenty-four men? Is it prudent to commit to so small a number the decision of the great questions which will come before them? Reason revolts at the idea.

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*Jonathan Elliot, ed. *The Debates in the Several State Conventions on the Adoption of the Federal Constitution.* Philadelphia, 1861, Vol. II, 245-247, 249.

IN OPPOSITION TO DESTRUCTION OF STATES' RIGHTS*

(George Clinton)

The recital, or premises on which the new form of government is erected, declares a consolidation or union of all the thirteen parts, or states, into one great whole, under the firm of the United States, for all the various and important purposes therein set forth. But whoever seriously considers the immense extent of territory comprehended within the limits of the United States, together with the variety of its climates, productions, and commerce, the difference of extent, and number of inhabitants in all; the dissimilitude of interest, morals, and politics, in almost every one, will receive it as an intuitive truth, that a consolidated republican form of government therein, can never **form a perfect union, establish justice, insure domestic tranquility, promote the general welfare, and secure the blessings of liberty to you and your posterity,** for to these objects it must be directed: this unkindred legislature therefore, composed of interests opposite and dissimilar in their nature, will in its exercise, emphatically be like a house divided against itself. . . .

From this picture, what can you promise yourselves, on the score of consolidation of the United States into one government? Impracticability in the just exercise of it, your freedom insecure, even this form of government limited in its continuance, the employments of your country disposed of to the opulent, to whose contumely you will continually be an object—you must risk much, by indispensably placing trusts of the greatest magnitude, into the hands of individuals whose ambition for power, and aggrandizement, will oppress and grind you—where from the vast extent of your territory, and the complication of interests, the science of government will become intricate and perplexed, and too mysterious for you to understand and observe; and by which you are to be conducted into a monarchy, either limited or despotic. . . .

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*Paul Leicester Ford, ed. *Essays on the Constitution of the United States,* Brooklyn, 1892, 255-257.

WE BECOME CONSENTERS TO, AND PARTAKERS IN, THE SIN AND GUILT OF THIS ABOMINABLE TRAFFIC*

(Joshua Atherton)

[Several members of the New Hampshire Convention spoke in favor of the clause in the draft Constitution permitting the slave trade to continue at least until 1808. Joshua Atherton responded:]

Mr. President, I cannot be of the opinion of the honorable gentlemen who last spoke, that this paragraph is either so useful or so inoffensive as they seem to imagine, or that the objections to it are so totally void of foundation. The idea that strikes those, who are opposed to this clause, so disagreeably and so forcibly, is, hereby it is conceived (if we ratify the Constitution) that we become **consenters to,** and **partakers in,** the sin and guilt of this abominable traffic, at least for a certain period, without any positive stipulation that it should even then be brought to an end. We do not behold in it that valuable acquisition so much boasted of by [its supporters]. . .**"that an end is then to be put to slavery."** Congress may be as much, or more, puzzled to put a stop to it then, than we are now. The clause has not secured its abolition.

We do not think ourselves under any obligation to perform works of supererogation in the reformation of mankind; we do not esteem ourselves under any necessity to go to Spain or Italy to suppress the inquisition of those countries; or of making a journey to the Carolinas to abolish the detestable custom of enslaving Africans; but, sir, we will not lend the aid of our ratification to this cruel and inhuman merchandise, not even for a day. There is a great distinction in not taking a part in the most barbarous violation of the sacred laws of God and humanity, and our becoming guaranties for its exercise for a term of years. Yes, sir, it is our full purpose to wash our hands clear of it.

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*Jonathon Elliot, ed. *The Debates in the Several State Conventions on the Adoption of the Federal Constitution.* Vol. II. 2nd Ed. Philadelphia, 1888, 203-204.

THE NEED TO LIMIT POWERS OF GOVERNMENT*

(William Lenoir)

My constituents instructed me to oppose the adoption of this Constitution. The principal reasons are as follows: The right of representation is not fairly and explicitly preserved to the people, it being easy to evade that privilege as provided in this system, and the terms of election being too long. . . .

. . .It appears to me that, instead of securing the sovereignty of the states, it is calculated to melt them down into one solid empire. . .it appears to me to be a scheme to reduce this government to an aristocracy. It guarantees a republican form of government to the states; when all these powers are in Congress, it will only be a form. It will be past recovery, when Congress has the power of the purse and the sword. . . .

. . .There was a very necessary clause in the Confederation, which is omitted in this system. That was a clause declaring that every power, etc., not given to Congress, was reserved to the states. The omission of this clause makes the power so much greater. Men will naturally put the fullest construction on the power given them. Therefore, lay all restraint on them. . . .

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*Jonathan Elliot, ed., *The Debates in the Several State Conventions on the Adoption of the Federal Constitution.* Vol. IV. Philadelphia, 1861, 202, 206.

NEED FOR A BILL OF RIGHTS*

(Patrick Henry)

This proposal of altering our federal government is of a most alarming nature! Make the best thing of this new government—say it is composed by anything but inspiration—you ought to be extremely cautious, watchful, jealous of your liberty; for, instead of securing your rights, you may lose them forever. If a wrong step be now made, the republic may be lost forever. If this new government will not come up to the expectation of the people and they shall be disappointed, their liberty will be lost, and tyranny must and will arise. I repeat it again, and I beg gentlemen to consider that a wrong step made now will plunge us into misery, and our republic will be lost. . . .

And here I would make this inquiry of those worthy characters who composed a part of the late federal Convention. I am sure they were fully impressed with the necessity of forming a great consolidated government instead of a confederation. That this is a consolidated government is demonstrably clear; and the danger of such a government is, to my mind, very striking. I have the highest veneration for those gentlemen; but, sir, give me leave to demand—What right had they to say, "We, the people"? My political curiosity, exclusive of my anxious solicitude for the public welfare, leads me to ask—Who authorized them to speak the language of "We, the people," instead of, "We, the states"? States are the characteristics and the soul of a confederation. . . .

Mr. Chairman, the necessity of a Bill of Rights appears to me to be greater in this government than ever it was in any government before. . . . All rights not expressly and unequivocally reserved to the people are impliedly and incidentally relinquished to rulers, as necessarily inseparable from the delegated powers. . . .

This is the question. If you intend to reserve your unalienable rights, you must have the most express stipulation; for, if implication be allowed, you are ousted of those rights. If the people do not think it necessary to reserve them, they will be supposed to be given up.

How were the congressional rights defined when the people of America united by a confederacy to defend their liberties and rights against the tyrannical attempts of Great Britain? The states were not then contented with implied reservation. No, Mr. Chairman. It was expressly declared in our Confederation that every right was retained by the states, respectively, which was not given up to the government of the United States. But there is no such thing here. You, therefore, by a natural and unavoidable implication, give up your rights to the general government.

Your own example furnishes an argument against it. If you give up these powers, without a Bill of Rights, you will exhibit the most absurd thing to mankind that ever the world saw—a government that has abandoned all its powers—the powers of direct taxation, the sword, and the purse. You have disposed of them to Congress, without a Bill of Rights—without check, limitation, or control. And still you have checks and guards; still you keep barriers—pointed where? Pointed against your weakened, prostrated, enervated state government! You have a Bill of Rights to defend you against the state government, which is bereaved of all power, and yet you have none against Congress, though in full and exclusive possession of all power!

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*Jonathan Elliot, ed. *The Debates in the Several State Conventions on the Adoption of the Federal Constitution. Vol. III.* Philadelphia, 1861, 445-449.

EXERCISES FOR LESSON II-9

You can use the following questions to guide analysis of ideas expressed in papers of the Antifederalists, which were written between October 1787 and April 1788.

A. **Rights of Citizens Must Be Preserved ("The Federal Farmer")**

1. According to "the Federal Farmer," what would happen to state governments under the Constitution of 1787?
2. According to "the Federal Farmer," what would happen to the rights and liberties of citizens under the Constitution of 1787?
3. According to "the Federal Farmer," how could the Constitution of 1787 be amended to improve it?
4. Why does "the Federal Farmer" think that the Constitution separates people from the government? Consider the procedures for electing the Senate and the President at this time. Why do you think people like this author looked to the state governments to protect the liberties of the people?

B. **Representation of Citizens in Government (Melancton Smith of New York)**

1. What two main objections to the Constitution of 1787 did Melancton Smith have?
2. Which of the following statements reflect Smith's ideas?
   a. Aristocrats should lead a government.
   b. Elections of representatives to government should not occur very often.
   c. A large number of representatives should participate in government.
   d. Aristocrats should not serve as members of the legislature.

C. **In Opposition to Destruction of States' Rights (George Clinton of New York)**

1. What does Clinton mean by a "consolidation' of the states?
2. Does Clinton favor or oppose "consolidation"? Explain.

D. **We Become Consenters to, and Partakers in, the Sin and Guilt of This Abominable Traffic (Joshua Atherton of New Hampshire)**

1. Atherton claims that the "Migration and Importation Clause" of Article I, Section 9 does not require that Congress end the African slave trade. Is Atherton right? Read this clause.
2. If this clause did not appear in the Constitution, could Congress act to end the slave trade?

E. **The Need to Limit Powers of Government (William Lenoir of North Carolina)**

1. Why did Lenoir oppose the Constitution of 1787? List **four** reasons.

2. Does Lenoir oppose or support the idea of a "consolidated" government? Explain.

3. How would Lenoir improve the Constitution of 1787?

F. **Need for a Bill of Rights (Patrick Henry of Virginia)**

1. Why does Henry object to the words "We the people" in the Preamble to the Constitution?

2. Why does Henry call for the addition of a Bill of Rights to the Constitution? List at least three reasons.

3. Does Henry fear a tyranny of the majority more than a tyranny of a few powerful government leaders? Explain.

G. **Identifying Antifederalist Ideas**

Some of the following statements made during the debates about ratification of the Constitution express Antifederalist sentiments. Identify the statements that seem to support the Antifederalist position. Place an "X" in the space next to each Antifederalist statement. Be prepared to explain your responses.

____ 1. I am against inserting a declaration of rights in the Constitution. . . . If such an addition is not dangerous, it is at least unnecessary.

____ 2. A bill of rights. . . serves to secure the minority against the usurpation and tyranny of the majority.

____ 3. The. . . new form of government . . . declares a consolidation or union of all the thirteen parts, or states, into one great whole. . . . It is an intuitive truth that a consolidated republican form of government [will lead]. . . into a monarchy, either limited or despotic.

____ 4. The vigor of government is essential to the security of liberty.

____ 5. There is no quarrel between government and liberty; the former is the shield and protector of the latter. The war is between government and licentiousness [disorder]. . . and other violations of the rules of society, to preserve liberty.

____ 6. That this is consolidated government is demonstrably clear; and the danger of such a government is. . . very striking. [The state governments must give up to Congress] the power of direct taxation, the sword, and the purse.

____ 7. Mr. President, shall it be said that, after we have established our own independence and freedom, we make **slaves** of others? O! Washington, what a name he has! How he was immortalized himself! But he holds those in slavery who have as good a right to be free as he has. He is still for self; and in my opinion, his character has sunk fifty per cent.

II-10. DECISIONS ABOUT THE CONSTITUTION AT THE MASSACHUSETTS CONVENTION, 1788

LESSON PLAN AND NOTES FOR TEACHERS

Preview of Main Points

This lesson tells about the decision of the Massachusetts Convention of 1788 to ratify the Constitution. The issues at the Convention and the contending forces and viewpoints are discussed. The decisive roles of Sam Adams and John Hancock are highlighted.

Connection to Textbooks

This lesson can be used with textbook chapters on the Constitutional Convention, which appear in high school textbooks in American history, civics, and government. The lesson fits the discussion of ratification of the Constitution, which is included in every textbook. However, the textbook treatments are rather sketchy. This lesson adds depth to the textbook treatment in at least three ways. First, it is a detailed case about one of the state conventions called to ratify the Constitution; none of the standard textbooks includes such a case. Second, this lesson emphasizes politics and political behavior; the typical texts usually have little or no commentary about the political events and strategies of the ratification contest. Third, the lesson focuses on personalities; the typical texts have little to say about the dramatic involvement of certain personalities in the ratification contest.

Objectives

Students are expected to:

1. Explain the critical importance of the Massachusetts Convention of 1788.
2. Identify objectives of the Antifederalists to the Constitution.
3. Identify arguments in support of the Constitution.
4. Explain the decisions of Adams and Hancock in the Convention.
5. Explain the decisive role of Adams and Hancock in the Convention.
6. Tell how the decision of the Massachusetts Convention influenced other state conventions.
7. Use evidence in tables and documents to support conclusions about actions and decisions at the Massachusetts Convention.
8. Analyze the decisions of Adams and Hancock in terms of the decision tree.
9. Make defensible judgments about the decisions of Adams and Hancock.

Suggestions for Teaching the Lesson

This lesson can be used as an "in-depth" case study, which follows the completion of the textbook treatment of the ratification contest. Having studied a general discussion of events associated with ratification, students can examine in some detail a case study of one state convention.

Opening the Lesson

- Begin by previewing the main points of the lesson for students. This provides students with advanced notice of the material they are to read. You might also explain how this lesson is connected to the material they have just studied.

Developing the Lesson

- Have students read the case study. Then conduct a discussion of the "factual review" questions, to make certain that students have understood the main ideas.
- Have students examine tables 1 and 2. Use the "interpreting evidence" questions to guide student use of these data.
- Students might also be asked to make inferences about connections between the Adams-Hancock proposal to amend the Constitution and the first ten amendments to the Constitution. See question 6 in the list of questions about "interpreting evidence."

Concluding the Lesson

- You might conclude the lesson with a decision-making exercise. Have students use the decision tree to guide analysis of the decision of Adams and/or Hancock to vote for the Constitution. You might make copies of a blank decision tree and distribute them to students. In addition, you might make and use a transparency of a decision tree as an aid to the discussion. Use the questions on page 98 about decision making skills, to guide the class discussion.
- Students should be encouraged to make positive and/or negative appraisals of the Adams and/or Hancock decisions. They should be required to explain the basis of their judgments in terms of ideas such as the effect of the decision on certain individuals or groups, the fairness of the decision, the practicality of the decision.
- One way to conduct the culminating decision-making exercise is to divide the class into small groups of four or five students. Have each group use a decision tree to analyze the decision of either Adams or Hancock. Then have one person from each group make a brief report of the group's analysis.

Suggested Film

To Form a More Perfect Union

This film depicts the struggle waged by the Federalists and the Antifederalists over ratifying the Constitution. Highlights Samuel Adams' and John Hancock's roles in ensuring ratification by the Massachusetts Convention. From *Decades of Decision: The American Revolution* series, National Geographic Society, 1974, 30 minutes.

II-10. DECISIONS ABOUT THE CONSTITUTION AT THE MASSACHUSETTS CONVENTION, 1788

Congress sent the Constitution to the states on September 29, 1787. How would citizens judge it? The Constitution could not become the nation's plan for government without the approval of at least nine state conventions.

As of January 9, 1788, five states had ratified the Constitution—Delaware, Pennsylvania, New Jersey, Georgia, and Connecticut. However, only one of the four largest states (Pennsylvania) had approved it. The other three biggest states, Massachusetts, Virginia and New York, had not yet reached decisions.

Importance of the Massachusetts Convention

The attention of the nation turned to Boston, Massachusetts, where the state convention debated the Constitution in January, 1788. Citizens of Massachusetts were sharply divided. At the start of the convention, a slight majority of the delegates seemed to favor the Antifederalist position in opposition to the Constitution.

The Federalists were worried. They knew that the decision in Massachusetts would greatly influence the conventions in New York and Virginia scheduled to convene later in the year. They also realized that the United States needed Massachusetts, a thriving center of commerce. It seemed that the delegates to the Massachusetts Convention would play a leading role in deciding the future of the United States.

Notable Delegates at the Massachusetts Convention

Rufus King and Nathaniel Gorham led the Federalists at the convention. They had been delegates to the Constitutional Convention of 1787. Elbridge Gerry had also represented Massachusetts at the convention in Philadelphia. In the end, however, Gerry refused to sign the finished document, and he continued to oppose it.

The two most famous and influential delegates at the Boston convention were John Hancock and Sam Adams, the legendary heroes of the American struggle for independence. In a close contest, these two men enjoyed enough popularity to turn the convention **for** or **against** the Constitution.

On the first day of the convention, delegates elected John Hancock as President of the meeting. The Federalists worried, because Hancock had not taken a stand for or against ratification. Some of his friends reported that he was leaning toward the Antifederalist side.

Objections of the Antifederalists

Sam Adams said that he had "difficulties and doubts respecting some parts of the proposed Constitution."

Adams had two main objections. **First,** he had reservations because the Constitution included no provisions protecting such liberties and rights of citizens as freedom of speech. **Second,** he believed that the Constitution gave too much power to the central government. By contrast, Adams wanted each state government to have more powers and rights. Adams said that "all powers not expressly delegated to Congress should be reserved to the States, to be exercised by them."

William Thompson, a delegate from Billerica, agreed with Adams. "Where is the bill of rights which shall check the power of this Congress," he said. Thompson also saw no need for a new Constitution. "Let us amend the old Confederation," he said. Thompson believed that a few changes in the Articles of Confederation would solve the nation's governmental problems.

Amos Singletary, a farmer himself, spoke for the many poor farmers from Worcester County who were alarmed by the government's power to tax citizens. He also feared that the national government under the new Constitution would only represent rich people. Amos Singletary rose to speak:

> We contended with Great Britain. . . because they claimed a right to tax us and bind us in all cases whatever. And does not this constitution do the same? Does it not take away all we have—all our property? Does it not lay all taxes, duties, imports, and excises? And what more have we to give?
>
> These lawyers, and men of learning and moneyed men, that talk so finely and gloss over matters so smoothly, to make us poor illiterate people swallow down the pill, expect to get into Congress themselves. They expect to be the managers of this Constitution, and get all the power and all the money into their own hands. And they will swallow up all us little folks.

A Defender of the Constitution

Josiah Smith, a farmer from Plymouth County, disagreed with Singletary. He spoke to the other delegates:

> Mr. President, I am a plain man, and get my living by the plough. I am not used to speak in public, but I beg your leave to say a few words to my brother plough-joggers in this house.
>
> I have lived in a part of the country where I have known the worth of good government by the want of it. . . .

> Our distress was so great that we should have been glad to snatch anything that looked like a government. Had any person that was able to protect us come and set up his standard, we should all have flocked to it, even if it had been a monarch, and that monarch might have proved a tyrant. So that you see that anarchy leads to tyranny; and better to have one tyrant than so many at once.
>
> Now, Mr. President, when I saw this Constitution, I found that it was a cure for these disorders. It was just such a thing as we wanted. I got a copy of it and read it over and over. I had been a member of the convention to form our own state constitution, and had learnt something of the checks and balances of power; and I found them all here. . . .
>
> I formed my own opinion and was pleased with this Constitution. My honorable old daddy there (pointing to Mr. Singletary) won't think that I expect to be a Congressman, and swallow up the liberties of the people. I never had any post, nor do I want one. But I don't think the worse of the Constitution because lawyers and men of learning, and moneyed men, are fond of it. . . .

Sam Adams Decided to Vote Yes

Sam Adams listened sadly to the lively exchanges of opinions. Most of the delegates would not have blamed Adams if he had not come to the meetings. His son had died during the first week of the Convention. The meetings had adjourned for one day as a sign of respect for Adams, and the delegates had attended the funeral.

Sam Adams insisted on returning to work the next day. Citizens had elected him to represent them, and he had an obligation to participate in the Convention on their behalf.

Adams' opposition to the Constitution lessened when he heard about the changing opinions of his Boston constituents. These citizens held a meeting at the Green Dragon Inn on Union Street. A large majority voted to back the Constitution if an added Bill of Rights protected the liberties of citizens against the powers of the government.

Paul Revere reported to Adams about the meeting at the Green Dragon. Adams believed his duty required him to support the wishes of the majority of citizens whom he represented. So he decided to support the Constitution, as long as recommendations calling for the ratification of a Bill of Rights accompanied the approved document.

The arguments of people like Josiah Smith also influenced Adams. He hated anarchy as much as tyranny. He favored law and order, as well as legal guarantees of the rights of citizens.

Sam Adams believed that the United States could not function effectively without a central government strong enough to enforce laws and maintain unity. Adams and his contemporaries faced the challenge of somehow balancing the power of the central government against the limits on the power which would protect the rights of citizens and their state governments.

Adams and Hancock Agreed to Cooperate

John Hancock had reached the same conclusion as Adams. If assured that a Bill of Rights would add certain protections to the Constitution, he too would back ratification.

Rumors suggested that Hancock also had other motives. Some people claimed that Hancock made a deal with the Federalists. They agreed to back him in his campaign for re-election as Governor of Massachusetts, in return for his supporting the Constitution. Furthermore, so the story goes, they promised to help him win election as the first Vice President under the new Constitution.

Hancock and Adams met and decided to cooperate and win support for the Constitution. Thus, on January 31, Hancock made a speech for the Constitution. Then he presented a series of amendments, which would guard the liberties of citizens and the rights of state governments. He pledged to vote for ratification if, in return, the Federalists pledged to support his amendments to the Constitution.

Sam Adams seconded Hancock's proposal and made a speech in favor of the Constitution supplemented by a Bill of Rights. Rufus King, Nathaniel Gorham, and other Federalists at the Convention agreed to the Hancock-Adams proposal.

The hard-line Antifederalists were shocked. They had expected a victory. The sensational speeches by Hancock and Adams suddenly revived the hopes of the Federalists. In all likelihood, several delegates would follow Hancock and Adams and vote for ratification.

Massachusetts Ratified the Constitution

The vote on February 6, 1788 was very close. **One hundred and eighty-seven** votes supported the Constitution and **168** opposed it. The Federalists mustered only 19 more votes than their opponents at a convention attended by 355 delegates. Table 1 (page 99) shows how the different counties voted.

Sam Adams and John Hancock probably played a central role in determining the outcome at the

Massachusetts Convention. If they had strongly opposed the Constitution, it probably would have failed to pass.

The decision in Massachusetts influenced delegates in other states. New Hampshire became the ninth state to ratify on June 21, 1788. On that day, with the required number of states having approved the document, the Constitution officially became the basic law of the United States. Virginia ratified it four days later. New York followed suit one month later. Each of these state conventions ratified the Constitution on condition that certain amendments would be made, as Massachusetts had done.

Notice the narrow margins of victory recorded in new Hampshire, Virginia and New York. (See table 2 on page 99.) If Massachusetts had voted against the Constitution, these other states might not have ratified it.

The Fates of Hancock and Adams and the Bill of Rights

Hancock's popularity soared after the Convention. He was re-elected as Governor. Adams won the position of Lieutenant Governor. However, Hancock failed miserably in his bid to become VicePresident of the United States. His Federalist friends did not support him, and John Adams, Sam Adams' cousin, won easily. George Washington became the first President with unanimous support.

The Federalists in Congress fulfilled their pledges to add a Bill of Rights to the Constitution. Congress in 1789 approved ten amendments. The states then approved the amendments, as directed by the Constitution. In 1791, the Bill of Rights became part of the Constitution.

John Hancock served as governor of Massachusetts until his death in 1793. Sam Adams took over as governor and was continuously re-elected until his death in 1803. The two heroes of the American Revolution had not participated in the Constitutional Convention at Philadelphia. They did play critical roles in the contest over ratification of the new plan for government. Without their decisive support, the Constitution might not have been accepted.

EXERCISES FOR LESSON II-10

Reviewing Facts and Main Ideas

1. Why did the Massachusetts Convention merit so much attention?
2. Why were John Hancock and Sam Adams very important people at the Massachusetts Convention?
3. What objections to the Constitution did the Antifederalists voice?
4. What arguments did Josiah Smith offer in support of the Constitution?
5. Why did Sam Adams and John Hancock decide to vote for ratification?
6. How did the decisions of Adams and Hancock influence the outcome of the Massachusetts Convention?

Interpreting Evidence

Use the information in tables 1 and 2, page 99, to answer the following questions:

1. Which counties voted for or against ratification?
2. Did the votes for and against the Constitution follow any geographical pattern?
3. What decisions about the Constitution did state conventions following the Massachusetts Convention make?
4. In which states was the margin of victory very narrow?
5. What speculations might you make about the influence of the Massachusetts Convention on the state conventions that followed it?
6. How did the ideas of Hancock and Adams influence the first ten amendments to the Constitution?

Decision-Making Skills

Use the decision tree on page 100 to help you answer these questions.

1. What was the occasion for decision by Sam Adams?
2. What alternatives were open to Adams?
3. List the likely consequences—both positive and negative—of each of Adams' alternatives.
4. List Adams' most important goals and/or values at stake in this case?
5. Why did Adams decide as he did?
6. Did Adams make a good decision? Explain.

TABLE 1
Voting by Counties in the Massachusetts Convention

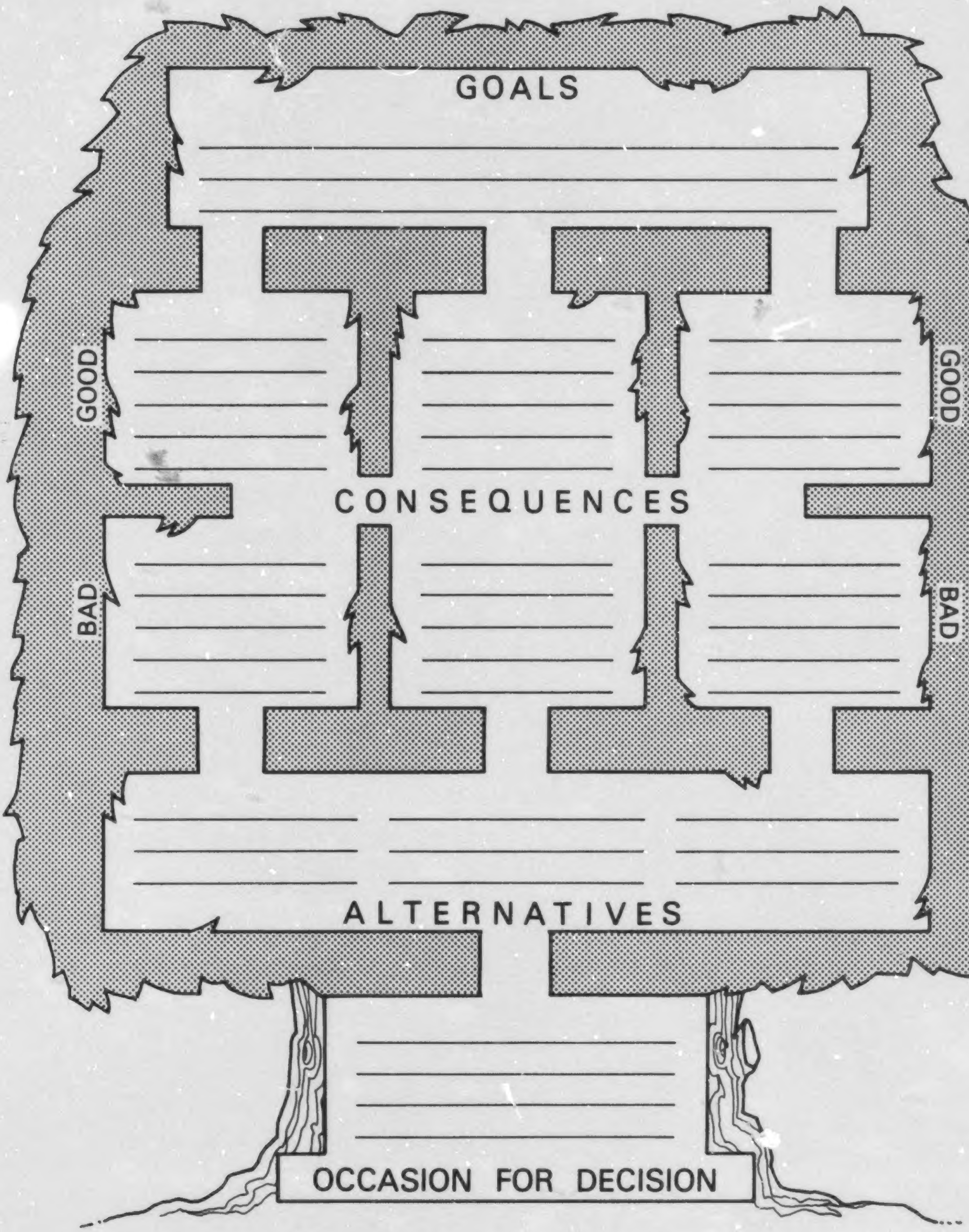
	Yeas	Nays	Location
Suffolk	33	5	east-central (coastal)
Essex	38	6	northeast (coastal)
Middlesex	18	10	east-central
Hampshire	19	33	western
Plymouth	21	6	southeast (coastal)
Barnstable	7	2	southeast (coastal)
Bristol	10	12	southeast (coastal)
Dukes	2	0	southeast (coastal)
Worcester	7	58	west-central
Berkshire	7	15	western
York	6	11	far-northern (Maine)
Cumberland	10	3	far-northern (Maine)
Lincoln	9	7	far-northern (Maine)
	187	168	

*This tabulation of the vote of the convention by counties shows the geographical distribution of the two parties. From *Mass. Centinel,* Feb. 23, 1788.

TABLE 2
Ratification of the Constitution by Thirteen State Conventions

State	Date of Ratification	Vote	Population at Date of Ratification
Delaware	Dec. 7, 1787	30-0	59,096
Pennsylvania	Dec. 12, 1787	46-23	434,373
New Jersey	Dec. 18, 1787	38-0	184,139
Georgia	Jan. 2, 1788	26-0	82,584
Connecticut	Jan. 9, 1788	128-40	238,141
Massachusetts	Feb. 6, 1788	187-168	378,787
Maryland	Apr. 28, 1788	63-11	319,728
South Carolina	May 23, 1788	149-73	249,073
New Hampshire	June 21, 1788	57-47	141,899
Virginia	June 25, 1788	89-79	747,610
New York	July 26, 1788	30-27	340,120
North Carolina	Nov. 21, 1789	194-77	393,751
Rhode Island	May 29, 1790	34-32	68,829

DECISION TREE


GOALS
GOOD
GOOD
CONSEQUENCES
BAD
BAD
ALTERNATIVES
OCCASION FOR DECISION

The decision-tree device was developed by Roger LaRaus and Richard C. Remy and is used with their permission.

II-11. DECISIONS ABOUT THE BILL OF RIGHTS, 1787-1791

LESSON PLAN AND NOTES FOR TEACHERS

Preview of Main Points

The birth of the federal Bill of Rights is the main theme of this lesson. Three occasions for decisions about the federal Bill of Rights are the focal points. First is a discussion of decisions about a Bill of Rights at the Constitutional Convention, 1787. The next occasion for decisions treated in this lesson is the ratification contest, 1787-1788. Finally, decisions about a Bill of Rights at the first session of Congress are examined.

Connection to Textbooks

All high school American history, civics, and government textbooks discuss briefly the arguments of Antifederalists for a federal Bill of Rights during the contest over ratification of the Constitution. The discussion is concluded with a statement about the proposal and ratification of the first ten amendments to the Constitution. This lesson can be used to supplement the very brief textbook discussions about the birth of the Bill of Rights. Through this lesson, students can examine alternative arguments for and against a federal Bill of Rights from the Constitutional Convention to the ratification of Amendments I-X.

Objectives

Students are expected to:

1. Examine arguments for and against a federal Bill of Rights at three points: (a) the Constitutional Convention, 1787, (b) the ratification contest, 1787-1788, and (c) the first session of Congress, 1789.
2. Analyze and judge James Madison's decisons about a federal Bill of Rights during the Constitutional Convention, the ratification contest, and the first session of Congress.
3. Practice skills in rational decision-making in response to the occasions for decision presented in this lesson.
4. Demonstrate comprehension of main ideas in the federal Bill of Rights, 1791.

Suggestions for Teaching the Lesson

Opening the Lesson

- Inform the students of the main points of the lesson. Tell them that a copy of the federal Bill of Rights, Amendments I-X, is included at the end of the lesson. They should refer to it as necessary to help them complete the lesson.
- Ask students to read the first page of the lesson, to the point where the first occasion for decision is introduced. Ask them to speculate about why a Bill of Rights was not included in the Constitution in 1787.
- After a brief discussion, inform students that they can check their speculations against information presented in the remainder of the lesson.

Developing the Lesson

- Ask students to read about the first occasion for decision presented in the lesson: decision about the Bill of Rights at the Constitutional Convention, 1787.
- Ask students to respond to the decision-making activity at the end of this section of the lesson. This may be done as a self-check activity whereby the student is prompted to think systematically about both sides of the issue about a federal Bill of Rights. However, you may want to conduct a class discussion about their decision-making activity.
- Ask students to read about the second occasion for decision in this lesson: decision about the Bill of Rights during the ratification contest, 1787-1788.
- Ask students to respond to the decision-making activity at the end of this section of the lesson. This might be done as a self-check activity which prompts the student to reflect upon the material they have read. However, you might want to ask two students to assume the roles of opponents in the debate about a Bill of Rights. Ask other students to appraise the opposing presentations.
- Ask students to read about the third occasion for decision in this lesson: decision about the Bill of Rights at the first session of Congress, 1789.
- Ask students to respond to the decision-making activity at the end of this section of the lesson. This may be done as a self-check activity, where the student is prompted to think systematically about the issues presented in the reading assignment. You may want to conduct a class discussion about this learning activity.

Concluding the Lesson

- Assign the remaining pages of the lesson.
- Ask students to analyze and appraise the choices of James Madison about the Bill of Rights during the three occasions for decision presented in this lesson. Use the questions under the heading, "Examining Decisions About the Bill of Rights," to guide the discussion.
- As a way of checking student comprehension of the Bill of Rights, you might assign the last section of the lesson. These learning activities are designed to help students identify and understand main ideas in the first ten amendments.

Suggested Reading

Donovan, Frank. *Mr. Madison's Constitution: The Story Behind the Constitutional Convention.* New York: Dodd, Mead & Company, 1965. This brief, easy to read book describes the involvement of James Madison in major decisions that shaped the Constitution of 1787 and the Bill of Rights.

Rossiter, Clinton. *1787: The Grand Convention.* New York: The Macmillian Company, 1966. 226-315. A very readable scholarly account of the Constitutional Convention and its aftermath, the book includes a fine discussion of the issue about including a Bill of Rights in the Constitution.

Rutland, Robert Allen. *The Birth of the Bill of Rights, 1776-1791.* Chapel Hill: The University of North Carolina Press, 1955. A detailed account of the origins of the federal Bill of Rights is presented. Issues and alternative views of the revolutionary era are highlighted.

II-11. DECISIONS ABOUT THE BILL OF RIGHTS, 1787-1791

The first ten amendments to the U.S. Constitution make up the Bill of Rights. They were approved by a two-thirds majority of both Houses of Congress in 1789 and ratified by three-quarters of the states on December 15, 1791.

Americans often think of their Bill of Rights as part of the original Constitution, which was written in 1787 and ratified in 1789. Instead, the Bill of Rights resulted directly from objections to the original Constitution voiced during the state ratifying conventions. Critics said that the Constitution did not sufficiently protect individuals against abuses of their civil liberties and rights by the federal government. They insisted that these liberties and rights be specified and included in the Constitution, the basic law of the nation.

The adoption of the Bill of Rights, Amendments I-X, guaranteed the people that the new national government would not take away many of their personal freedoms, liberties, and rights. In this way, the Bill of Rights checked and limited the power that the government of the United States could exercise.

The Bill of Rights protected citizens from interference by the new United States government in the exercise of **liberties** such as freedom of speech, press, and religious choice. It also guaranteed certain **rights** of people accused of crimes, such as trial by jury and equal and fair treatment according to law, reserving other rights for the state governments and the people.

Americans debated and decided about a Bill of Rights (1) in 1787 at the Constitutional Convention, (2) in 1787-1788 during the debates about ratification of the Constitution, and (3) in 1789 at the first session of Congress under the new Constitution. What decisions about the Bill of Rights were made at these three times, 1787, 1787-88, and 1789? Who favored and who opposed including a Bill of Rights in the Constitution on each of these three occasions? How did supporters and opponents of including a Bill of Rights in the Constitution justify their positions?

Decisions About the Bill of Rights at the Constitutional Convention, 1787

Delegates to the Constitutional Convention concentrated on drafting a plan for an effective central government. The overriding topic of their discussion was the powers to be granted to or withheld from the federal government.

Early in the convention, George Mason of Virginia cautioned the delegates to remember "to attend to the rights of every class of the people." Mason had co-authored, the Virginia Declaration of Rights of 1776 with Edmund Pendleton and James Madison. This statement of civil liberties served as a model for the constitution-makers of other states.

The state bills of rights seemd to provide ample legal protection for individual liberties under the weak central government established by the Articles of Confederation. However, the Constitutional Convention aimed to establish a much stronger central government which would be superior to the state governments. This development seemed to necessitate the drafting of a federal Bill of Rights to protect individual liberties against the powers of a strong federal government.

Other delegates agreed with Mason about the importance of civil liberties and rights. Most of them, however, saw no need to include in the Constitution a long list of freedoms and rights that were to be protected anyway. James Madison of Virginia argued that the state constitutions provided sufficient protection for individual rights. The new federal government would have only those powers the states and the people allowed it to have. He agreed with James Wilson of Pennsylvania who considered it unnecessary to deny powers to the federal government that the states or the people had not granted to it. For example, it seemed unnecessary to specify that the government could not make laws prohibiting the freedom of speech when it did not have the power to make such laws.

On September 12, near the end of the Constitutional Convention, George Mason forcefully raised the issue of a Bill of Rights. He said that the Constitution should be "prefaced with a Bill of Rights. . . . It would give great quiet to the people; and with the aid of the State declarations [Bill of Rights], a bill might be prepared in a few hours."

Elbridge Gerry of Massachusetts suggested appointing a committee to write a Bill of Rights for inclusion in the Constitution; Mason seconded the motion.

Roger Sherman of Connecticut spoke against the motion. He recognized the necessity of protecting the liberties and rights of the people. He argued, however, that "the State Declarations of Rights are not repealed by this Constitution; and being in force are sufficient [to protect the liberties of the people]."

Mason responded with the reminder that the federal government under the Constitution would "be paramount [supreme] to State Bills of Rights." Thus, the federal government might legally infringe upon or take away those rights.

The other delegates overwhelmingly rejected the Gerry-Mason motion. The final draft of the Constitution did not include a separate Bill of Rights.

The new plan of government, however, did recognize certain basic liberties and rights of the people. First and foremost, it established a system of representative government, framing it in the name of the people. Article III provided the right of trial by jury for all faced with criminal prosecutions. Article I, Section 9 protected the privilege of the *writ of habeas corpus*: this writ is a court order requiring police to explain to a judge why they have arrested and detained an individual. An important one, this right prevents authorities from detaining citizens without a reason.

Article I, Section 9, also prohibited the federal government from passing *bills of attainder* and *ex post facto laws*. A bill of attainder is a statute that declares that a particular person is a criminal who should be punished. A bill of attainder declares a person guilty of a crime even though that person has never been tried or given a chance to offer a defense in a court of law. During the War for Independence, revolutionaries had used bills of attainder to punish tories (British sympathizers) whom they could not convict of any particular crime.

An *ex post facto* law (Latin for "after the fact") allows the government to punish people for actions ruled criminal after they had been committed. Such laws had often been used in England to punish people for their political or religious beliefs. Article I, Section 10, prohibited state governments from passing bills of attainder or *ex post facto* laws.

The civil liberties and civil rights protections included in the Constitution did not satisfy George Mason. He refused to sign the final draft of the Constitution.

After the Constitutional Convention had adjourned, James Madison wrote to Thomas Jefferson, who was serving in Paris as the American ambassador to the government of France. On October 24, 1787, Madison wrote: "Col. Mason left Philad. in an exceeding ill humor indeed. . . . He returned to Virginia with a fixed disposition to prevent the adoption of the plan [Constitution] if possible. He considers the want of a Bill of Rights as a fatal objection."

Assume that you were a delegate at the Constitutional Convention. Would you have decided for or against the Gerry-Mason motion to include a Bill of Rights in the Constitution? Explain your decision. What arguments would you have presented to convince others to agree with you? (Use the decision tree at the end of this lesson as a guide to your responses to these questions.)

Decisions About the Bill of Rights During the Ratification Contest, 1787-1788

In October 1787, George Mason circulated a statement of his objections to the Constitution. He said:

> There is no declaration of rights; and, the laws of the general government [the government of the United States] being paramount to [superior to] the laws and constitutions of the several states, the declarations of rights in the separate states are no security. . . .
>
> The judiciary of the United States . . . [will] absorb and destroy the judiciaries of the several states. . . .
>
> There is no declaration of any kind for preserving the liberty of the press, the trial by jury in civil cases, nor against the danger of standing armies in time of peace.

Richard Henry Lee of Virginia strongly supported Mason's position. He refused to endorse the Constitution unless it included a Bill of Rights. In 1788, Lee wrote:

> There are certain unalienable and fundamental rights, which in forming the social compact ought to be explicitly ascertained and fixed. A free and enlightened people in forming this compact, will not resign all their rights to those who govern, and they will fix limits to their legislators and rulers, which will soon be plainly seen by those who govern; and the latter will know they cannot be passed unperceived by the former and without giving a general alarm. These rights should be made the basis of every constitution. . . . I still believe a complete federal Bill of Rights to be very practicable.

Alexander Hamilton of New York argued against Mason, Lee, and their supporters. He wrote (Federalist #84):

> I . . . affirm that bills of rights . . . are unnecessary in the proposed Constitution. For why declare that things shall not be done which there is no power to do? Why, for instance, should it be said that the liberty of the press shall not be restrained, when no power is given by which restrictions may be imposed.

James Wilson of Pennsylvania agreed with Hamilton in a speech before his state legislature on October 9, 1787. He said:

> . . . a bill of rights . . . would have been superfluous . . . to have stipulated with a federal body of our own creation that we should enjoy those privileges of which we are not divested. . . . For instance, the liberty of the press . . . —what control can proceed from the Federal government to shackle or destroy that sacred palladium of national freedom? If, indeed, a power similar to that which has been granted for the regulation of commerce had been granted to regulate literary publications, it would have been . . . necessary to stipulate that the liberty of the press should be preserved. . . .
>
> The power of direct taxation has likewise been treated as an improper delegation to the federal government; but when we consider it as the duty of that body to provide for the national safety, to support the dignity of the union, and to discharge the debts contracted upon the collected faith of the States for their common benefit, it must be acknowledged that [the federal government] . . . ought . . . to possess every means requisite for a faithful performance of their trust. . . .
>
> If there are errors, it should be remembered that the seeds of reformation are sown in the work itself, and the concurrence of two-thirds of Congress may at any time introduce alterations and amendments. Regarding it, then in every point of view . . . I am bold to assert that it is the best form of government which has ever been offered to the world.

Spirited debates in state ratifying conventions centered on whether to insist upon the inclusion of a Bill of Rights as a condition for approval of the Constitution. Some of the most vigorous and interesting debates occurred at the Virginia ratifying convention. George Mason, Richard Henry Lee, and Patrick Henry led the Antifederalist forces in Virginia (those who opposed ratification for one reason or another). James Madison was a leader of the Federalists (those who supported ratification).

Henry spoke forcefully for liberty of individuals and the rights of state governments:

> Mr. Chairman, the necessity of a Bill of Rights appears to me to be greater in this government than ever it was in any government before. . . . All rights are not expressly and unequivocally reserved to the people are impliedly and incidentally relinquished to rulers, as necessarily inseparable from the delegated powers. . . .
>
> This is the question. If you intend to reserve your unalienable right, you must have the most express stipulation; for, if implication be allowed, you are ousted of those rights. If the people do not think it necessary to reserve them, they will be supposed to be given up. . . .
>
> It was expressly declared in our Confederation that every right was retained by the states, respectively, which was not given up to the government of the United States. But there is no such thing here. You, therefore, by a natural and unavoidable implication, give up your rights to the general government. . . .

Henry and his associates suggested several amendments to the proposed Constitution. Similar to the Virginia Declaration of Rights of 1776, they intended to protect basic liberties and rights of the people and the rights of the state governments against the possible abuse by a strong federal government.

James Madison replied: "As far as his [Henry's] amendments are not objectionable, or unsafe, so far they may be subsequently recommended—not because they are necessary, but because they can produce no possible danger."

On June 26, 1788, the Virginia Convention ratified the Constitution with the attached recommendation that the states add a Bill of Rights as soon as possible. Madison and other Federalists had pledged to promote the amendments recommended by the Virginia Convention.

Advocates of a Bill of Rights had won pledges from the Federalists to work for the addition of certain civil liberties to the Constitution at several state conventions. In return for this pledge from the Federalists, these delegates agreed to vote for ratification of the Constitution. Agreements of this sort had helped to sway the decision in favor of the Constitution at the ratifying conventions in Massachusetts, New Hampshire, Virginia, and New York.

Assume that you attended the state ratifying convention in Virginia as a delegate. Would you have decided for or against ratification if a provision calling for the immediate drafting of a Bill of Rights accompanied the Constitution as soon as possible? Explain your decision. What arguments would you have presented to convince others to agree with you? (Use the decision tree at the end of this lesson as a guide to your responses to these questions.)

Decisions About the Bill of Rights at the First Session of Congress, 1789

Pressures from Antifederalists resulted in the proposal that a Bill of Rights be added to the Constitution. Thus, James Madison, now a Congressman representing Virginia, proposed several amendments to the First Congress of the United States, which met in 1789. Madison said:

> There have been objections of various kinds. . .against the Constitution, but I believe the great mass of the people who opposed it, disliked it because it did not contain effectual [guarantees against] encroachments on particular rights, and those safeguards which they have been long accustomed to have interposed between them and the magistrate who exercises the sovereign power; nor ought we to consider them safe, while a great number of our fellow citizens think these securities necessary.

Roger Sherman responded negatively to Madison's proposal. He had argued against a Bill of Rights at the Constitutional Convention and at the ratification convention in Connecticut. He reported that his constituents wanted no Federal Bill of Rights. Rather, they wanted a stable government that would establish an effective union of the states. He agreed with arguments made previously by James Wilson and Alexander Hamilton on the Bill of Rights issue.

James Jackson, a representative from Georgia, agreed with Sherman: "I am against inserting a declaration of rights in the Constitution. . . . If such an addition is not dangerous or improper, it is at least unnecessary."

A majority in Congress seemed ready to agree to most of Madison's proposals, calling for only minor changes. One item, however, concerned the supporters of states' rights within the Federal Union.

Madison proposed this item, which became Amendment X of the Constitution: "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."

Antifederalist leaders wanted to insert the word "expressly" in front of the word "delegated" in Madison's proposal. They recalled the wording in Article II of the Articles of Confederation, which stated: "Each state retains its sovereignty, freedom and independence, and every Power, Jurisdication and right, which is not by this confederation expressly delegated to the United States, in Congress assembled."

These men, and many others, also expressed concern about the "necessary and proper" clause of Article I, Section 8 of the Constitution. That clause states: "The Congress shall have Power. . . . To make all laws which shall be necessary and proper for carrying into Execution the foregoing Power, and all other Powers vested by this Constitution in the government of the United States, or in any Department or Officer thereof."

Antifederalists felt that this clause would allow Congress to do many things not expressly provided for in the Constitution. Supporters of the Constitution like Hamilton considered a Bill of Rights unnecessary because Congress had no power to legislate on such matters as religion or freedom of speech. Opponents of the Constitution, however, pointed to the "necessary and proper" clause and expressed the fear that someday Congress might think it "necessary and proper" to limit the right of people to express their opposition to the policies of the government, to deny people right to a jury trial, or even to arrest large numbers of people and hold them without trial. Voicing such fears, some men in Congress wanted to limit the power of the government to those powers "expressly" granted to it.

Madison objected strongly to all attempts to include the words "expressly delegated" in his proposed amendment. He believed that to do so would limit too strictly the power of the new federal government and might render it as ineffective as the government created under the Articles of Confederation had been. A large majority in Congress agreed with Madison on this matter, while recognizing as he did the general need to add a Bill of Rights to the Constitution.

Congress approved twelve amendments. More than two-thirds of the members voted for the amendments, as required by Article V of the Constitution. Congress then sent the amendments to the states in accordance with Article V. After three-fourths of the states ratified ten of these amendments (December 15, 1791), they became part of the Constitution. These first ten amendments became an integral part of the new Constitution. The two amendments that were not approved involved:

- the apportionment of Representative according to the size of the population.
- the payment for Senators and Representatives

Assume that you served as a representative to the first session of Congress under the Constitution. Would you have decided for or against the general proposal for a Bill of Rights? Would you have decided for or against Madison's proposal, which became the Tenth Amendment? Explain your decisions. What arguments would you have presented to convince others to agree with you? (Use the decision tree at the end of this lesson as a guide to your response to these questions.)

The Federal Bill of Rights, 1791

The Bill of Rights of 1791 applied only to the federal government. These first ten amendments limited the power of the federal government in certain ways; they provided legal safeguards against certain tyrannical acts by the government of the United States. However, as formulated in 1791, the first ten amendments did not apply to the state governments. People in each state had to look to their own state constitutions for guarantees of their civil liberties and rights.

A copy of the federal Bill of Rights appears below. What are the main ideas of these ten amendments? What liberties or rights do they guarantee?

FIRST AMENDMENT

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

SECOND AMENDMENT

A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.

THIRD AMENDMENT

No Soldier shall, in time of peace be quartered in any house, without the consent of the Owner, nor in time of war, but in a manner to be prescribed by law.

FOURTH AMENDMENT

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

FIFTH AMENDMENT

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

SIXTH AMENDMENT

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

SEVENTH AMENDMENT

In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.

EIGHTH AMENDMENT

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

NINTH AMENDMENT

The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

TENTH AMENDMENT

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

The Bill of Rights and the Revolution

Many of these amendments reflect the experience of Americans immediately before and during the Revolution. Think about the colonists' relations with the British as you read these amendments. Many originally came here to escape religious intolerance in Britain, Germany, France, and elsewhere. This original reason for leaving Europe explains the first clause of the First Amendment. Remember how the colonists had tried to petition the King and speak out against his policies as you read the rest of the amendment.

When you read Amendment II, think about the Battle of Lexington and Concord, which opened the war with England. The British soldiers marched to those towns to capture the weapons owned by the local militia. After the Revolution, the people of America wanted to ensure that there would always be a citizens' army, and that the national government would not try to outlaw such militias in favor of a professional army that would threaten the liberties of the people. The Americans in 1789 also feared that some president might seize power and declare himself president, or dictator, for life. A state militia could prevent such a man from staying in power. All these considerations contributed to the addition of the Second Amendment to the Constitution.

When you read the other eight amendments, think about how the experiences of the Americans before and during the Revolution influenced the drafters of the Bill of Rights. You might want to reread the Declaration of Independence, which lists why the colonists revolted against England. You might also want to review the various actions of England in the period before the Revolution. Consider such English laws as the Intolerable Acts, the Writs of Assistance, and the creation of Admiralty Courts.

EXERCISES FOR LESSON II-11

Examining Decisions About the Bill of Rights

Refer to the decision tree at the end of the lesson to guide your responses to the following questions.

1. In deciding on the necessity and nature of a federal Bill of Rights, what alternatives did James Madison consider on these three occasions?
    a. the Constitutional Convention, 1787
    b. the Virginia Ratifying Convention, 1788
    c. the First Session of Congress, 1789
2. What choices did Madison make about a federal Bill of Rights on these three occasions?
    a. the Constitutional Convention, 1787
    b. the Virginia Ratifying Convention, 1788
    c. the First Session of Congress, 1789
3. What changes in Madison's decisions on a Bill of Rights from 1787-1789 suggest a change of opinion? Explain. How did he change his mind and why?
4. What is your judgment of Madison's decisions about a Bill of Rights in 1787, 1788, and 1789? Did he decide correctly on each occasion? Were his decisions good or bad? Explain.

Examining the Federal Bill of Rights, 1791

The first ten amendments might fall into four categories:

1. Those guarding the liberties and rights of individuals from interference by the federal government;
2. Those defining the legal rights and procedural rights of individuals accused of crimes or otherwise involved in the resolution of disputes under the law;
3. Those guaranteeing the retention of rights that are not stated specifically in the Constitution.
4. Those limiting the jurisdiction of the national government and otherwise depriving the central authority the power to institute a dictatorship.
    a. Which of the first ten amendments belong in category 1, described above? Which ones belong in category 2? Which of the amendments belong in category 3? Which belong in category 4? Explain your responses.

b. **Matching Activity.** Match the amendments in **List 1** with the statements about liberties or rights in **List 2.** Write the numeral that identifies each amendment in List A in the correct space next to a statement in List B.

List A

Amendment #:
I
II
III
IV
V
VI
VII
VIII
IX
X

List B

____ 1. Freedom from unreasonable searches.

____ 2. Protection against cruel and unusual punishments.

____ 3. Right of states to maintain a militia.

____ 4. Right to trial by jury in criminal cases.

____ 5. Freedom of speech.

____ 6. Reserves for the states powers not granted to the federal government.

____ 7. Right to trial by jury in civil cases.

____ 8. Protection against arbitrary military occupation of person's home.

____ 9. Right to assemble and present public criticisms of the government.

____ 10. Freedom of religious choice.

____ 11. Right to due process of the law (legal proceedings carried out according to established rules) with respect to life, liberty or property.

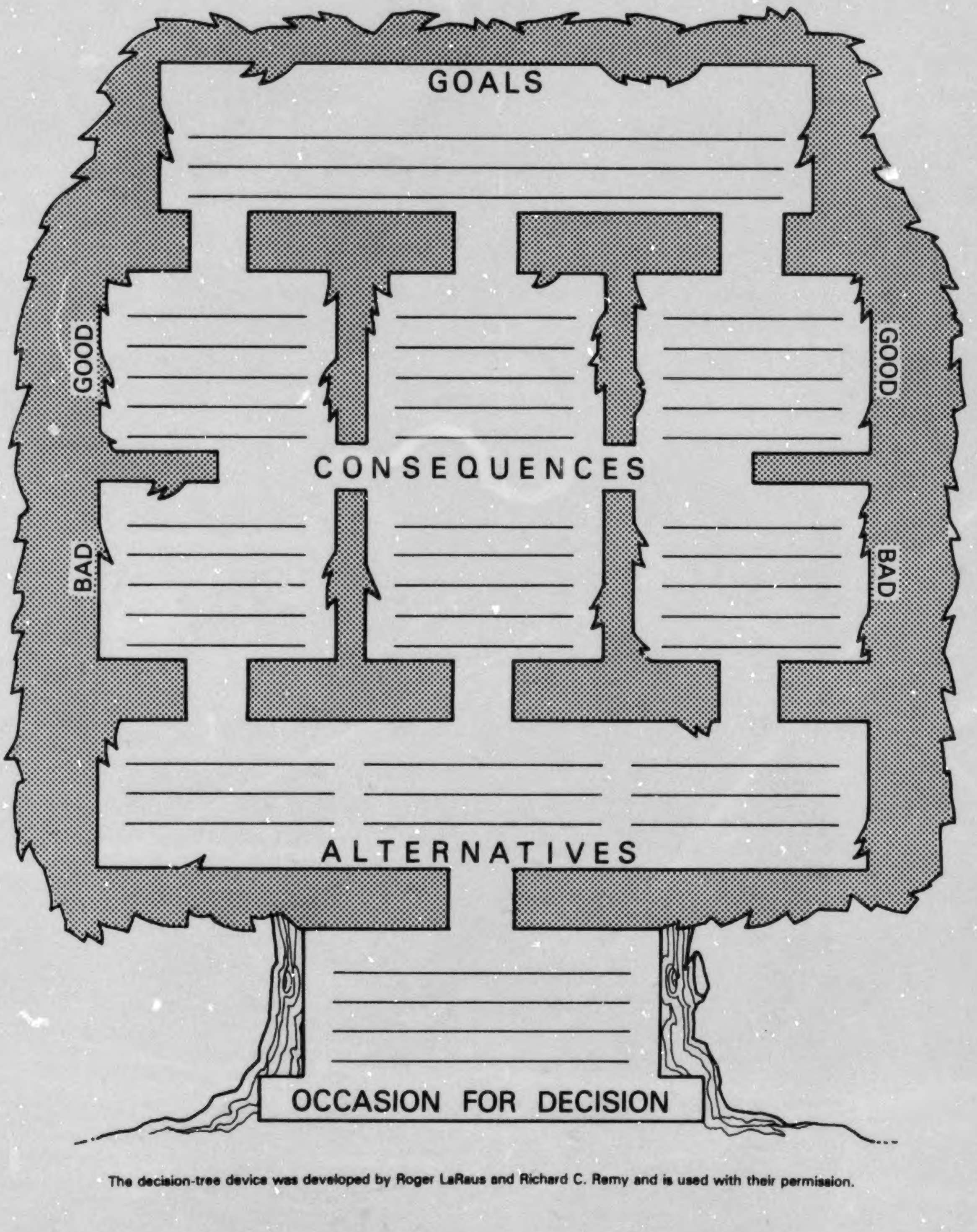
____ 12. Freedom of the press.

____ 13. Right not to have to testify against yourself at a trial or be forced to answer questions when accused of a crime.

____ 14. Guarantees accused persons right to bail.

____ 15. Guarantees the right to a lawyer for persons on trial.

DECISION TREE


GOALS
GOOD
GOOD
CONSEQUENCES
BAD
BAD
ALTERNATIVES
OCCASION FOR DECISION

The decision-tree device was developed by Roger LaRaus and Richard C. Remy and is used with their permission.

II-12. TIMETABLE OF MAIN EVENTS IN THE MAKING OF THE CONSTITUTION, 1781-1791

LESSON PLAN AND NOTES FOR TEACHERS

Preview of Main Points

This lesson is a "timetable of events" in the making of the U.S. Constitution. The overview begins with ratification of the Articles of Confederation, March 1, 1781, and ends with ratification of the first ten amendments to the Constitution (the federal Bill of Rights), December 15, 1791.

Connection to Textbooks

This lesson can be used as an aid to studying textbook chapters about the making of the U.S. Constitution. It can be used to provide students with an overview of events before they read a textbook chapter on the Constitutional Convention. It can be used as a handy guide to key events and dates, to which students might refer as they read a textbook chapter on the Constitutional Convention. This timetable of events can also be used as an aid to reviewing a textbook chapter about the making of the Constitution.

Objectives

Students are expected to:

1. Demonstrate ability to use a "timetable" of events to locate facts about the making of the U.S. Constitution.
2. Use a "timetable" to answer questions about the chronology of major events in the making of the U.S. Constitution.
3. Arrange in chronological order major events in the making of the Constitution.
4. Match key events in the making of the Constitution with the dates of those events.
5. Interpret facts presented in a "timetable" in order to explain tentatively aspects of major events in the making of the Constitution.

Suggestions for Teaching the Lesson

Opening the Lesson

- This lesson might be used as an overview to a textbook chapter about the Constitutional Convention. If so, ask students to read the events in the "timetable" and to raise questions about the making of the U.S. Constitution, which might be answered by a textbook chapter, which would be read after discussing this timetable.
- This lesson might be used as a review of material covered in a textbook chapter about the making of the Constitution. If so, ask students to read the events in the "timetable" and to use the listing as an aid to summarizing and reviewing material covered in the textbook chapter.

Developing the Lesson

- Have students use the "timetable" to complete activities 1-3, at the end of the lesson. These activities are titled: (1) Arranging Events in Chronological Order, (2) Matching Activity, and (3) Sentence Completion Activity.
- Discuss the correct answers with students. See the answer sheet at the end of this lesson plan.

Concluding the Lesson

- Have students complete the activity at the very end of the lesson. It is titled Interpreting Facts in the Timetable.
- Discuss questions in the final activity with students. This activity involves interpretation and speculation. There may be reasonable differences in the answers of students.

ANSWERS TO ACTIVITIES 1-3 IN LESSON II-12

1. Events Below Are Listed in Chronological Order

Ratification of the Articles of Confederation
Annapolis Convention
Shays' Rebellion Ended
Beginning of the Constitutional Convention
Great Compromise Between Larger and Smaller States
First *Federalist* Paper appeared in a Newspaper
Ratification of the United States Constitution
Virginia Ratified the United States Constitution
George Washington Inaugurated as First President of the United States of America
Ratification of the Federal Bill of Rights

2. Answers to Matching Activity (Roman numerals that belong in the spaces in List B.)

(1) VI	(6) XII
(2) XX	(7) XV
(3) XI	(8) X
(4) II	(9) XVIII
(5) I	(10) XIV

3. Answers to Sentence Completion Activity

a. Treaty of Paris
b. The Articles of Confederation
c. Rhode Island
d. Annapolis Convention
e. Alexander Hamilton and James Madison; *The Federalist*
f. The Bill of Rights
g. Delaware
h. Rhode Island
i. Virginia
j. Great Compromise

II-12. TIMETABLE OF MAIN EVENTS IN THE MAKING OF THE CONSTITUTION, 1781-1791

Main events associated with the making of the United States Constitution appear below in chronological order. This list consists of three sections: (1) events preceding the Constitutional Convention, (2) events of the Constitutional Convention, and (3) events following the Constitutional Convention.

1. EVENTS PRECEDING THE CONSTITUTIONAL CONVENTION

a. **March 1, 1781.** All thirteen states ratified the Articles of Confederation. They went into effect as the plan for government of the United States of America.

b. **September 3, 1783.** The United States and Great Britain signed the Treaty of Paris, officially ending the American Revolution. Great Britain recognized the independence of the United States, and the Treaty traced the boundaries of the new nation.

c. **August 7, 1786.** Congress discussed proposals for reforming the Articles of Confederation. Proposed amendments recognized the need to strengthen the government of the United States. However, Congress did not send these proposed amendments to the states for ratification. Their drafting did indicate, however, that leaders in the government recognized the need to revise the Articles of Confederation.

d. **September 11-14, 1786.** Annapolis Convention convened. Delegates from five states—New York, New Jersey, Delaware, Pennsylvania, and Virginia—attended this meeting held in Annapolis. The convention issued a report that called upon the thirteen states to send representatives to a new convention meeting in Philadelphia in May, 1787 for the purpose of revising the Articles of Confederation.

e. **February 4, 1787.** The militia of the State of Massachusetts crushed Shays' Rebellion. This rebellion of poor farmers had lasted for several months. The rebellion and the economic problems that sparked it highlighted the flaws of government under the Articles of Confederation. Thus, Shays' Rebellion influenced Americans to move ahead with plans to reform government under the Articles of Confederation.

f. **February 21, 1787.** Congress gave official approval for a convention to meet in Philadelphia "for a sole purpose of revising the Articles of Confederation and reporting to Congress and the several legislatures such alternatives and provisions therein." Congress gave its approval only after a number of states had already appointed delegates to the convention and indicated they would meet with, or without, congressional approval.

2. EVENTS OF THE CONSTITUTIONAL CONVENTION

a. **May 25, 1787.** The Constitutional Convention began. At the first meeting, the delegates unanimously elected George Washington to serve as president of the Convention.

b. **May 29, 1787.** Edmund Randolph introduced the Virginia Plan to the Convention. This proposal, which reflected the ideas of James Madison, encompassed more than a revision of the Articles of Confederation. It proposed a strong national government to replace the ineffective government under the articles. The Virginia Plan suggested creating a new government and Constitution.

c. **June 15, 1787.** William Paterson introduced the New Jersey Plan as an alternative to the Virginia Plan. The New Jersey Plan sought to maintain equality of representation and voting power for all the states regardless of size and population. It called for fewer changes in the central government than did the Virginia Plan.

d. **June 19, 1787.** Delegates voted to reject the New Jersey Plan. They continued to discuss a central government of the kind proposed by the Virginia Plan.

e. **July 2, 1787.** Delegates from smaller and larger states were deadlocked in discussion over how many votes each state should have in the Senate. With the Convention on the verge of breaking up over this issue, the delegates appointed a committee to find a solution to the problem.

f. **July 12, 1787.** The Convention agreed to the "3/5ths Clause." Under this clause the Convention agreed to include slaves in counts made to determine proportional representation in Congress and state tax burden. But slaves were not to be counted as whole persons. Rather, five slaves would count as much as three free persons. Conscious that counting slaves would give the South greater proportional representation, the North did not want to include slaves in population counts determining congressional representation because many did not consider slaves people, but treated them as property. The South wanted to count slaves fully for purposes of determining representation because doing so would give the South a significantly greater number of representatives in Congress. The "3/5ths Compromise" set the stage for the "Great Compromise" four days later.

g. **July 16, 1787.** The Great Compromise resolved the conflict between smaller and larger states. The compromise provided for equal representation in the Senate (two per state) and proportional representation based on population in the House.

h. **July 17-26, 1787.** Delegates finished discussing and modifying the Virginia Plan. They passed twenty-three resolutions on to a "committee of detail."

i. **August 6, 1787.** The committee of detail submitted a rough draft of the Constitution to the Convention.

j. **August 25, 1787.** The Convention reached a major compromise on the slave trade. Some Southerners, such as Madison, as well as many Northerners, had favored allowing Congress to end the importation of slaves from Africa. But, delegates from South Carolina, North Carolina, and Georgia threatened to leave the Convention and to keep their states out of the new nation if the Constitution permitted the government to interfere with their right to import new slaves. The compromise reached on August 25 prohibited Congress from interfering with the slave trade for twenty years. In return for this concession, delegates from the deep South agreed to support the right of Congress to regulate all other commerce.

k. **August 29, 1787.** As the process of drafting the Constitution drew to a close, delegates from Georgia and South Carolina demanded the inclusion of a "fugitive slave clause" enabling slaveholders to recover their human property when their slaves escaped to other states. Some Northerners opposed this measure, but by this time the delegates were eager to end the convention. Faced with the stubborn insistence of the deep South delegates, no one had the energy to oppose the fugitive slave clause.

l. **August 6-September 8, 1787.** Delegates examined and discussed each article of the rough draft of the Constitution. They changed some parts and made additions.

m. **September 8, 1787.** A committee on style was appointed to write a final draft of the Constitution.

n. **September 12, 1787.** The Committee presented a draft of the Constitution to the Convention.

o. **September 13-15, 1787.** Delegates examined the final draft and made a few minor changes.

p. **September 17, 1787.** Each of the twelve state delegations voted to approve the final copy of the Constitution. However, three of the forty-two delegates present refused to sign it. The Convention formally adjourned.

3. EVENTS FOLLOWING THE CONSTITUTIONAL CONVENTION

a. **September 20, 1787.** Congress received the proposed Constitution from the delegates to the Constitutional Convention.

b. **September 28, 1787.** Congress voted to send the Constitution to the legislature of each state. Congress asked each state to convene a special ratifying convention, which would either approve or reject the Constitution.

c. **October 27, 1787.** The first of *The Federalist* essays appeared in a New York newspaper. During the next six months, a total of 85 essays were written and published. They brilliantly analyzed and defended the Constitution. Alexander Hamilton and James Madison wrote most of the articles, and John Jay authored five of the essays.

d. **December 7, 1787.** Delaware was the first state to ratify the Constitution. The vote was unanimous, 30-0.

e. **December 12, 1787.** Pennsylvania was the second state to ratify the Constitution. The vote was 46-23.

f. **December 18, 1787.** New Jersey was the third state to ratify the Constitution. The vote was 38-0.

g. **January 2, 1788.** Georgia was the fourth state to ratify the Constitution. The vote was 26-0.

h. **January 9, 1788.** Connecticut was the fifth state to ratify the Constitution. The vote was 128-40.

i. **February 6, 1788.** Massachusetts was the sixth state to ratify the Constitution. The vote was 187-168.

j. **April 28, 1788.** Maryland was the seventh state to ratify the Constitution. The vote was 63-11.

k. **May 23, 1788.** South Carolina was the eighth state to ratify the Constitution. The vote was 149-73.

l. **June 21, 1788.** New Hampshire was the ninth state to ratify the Constitution. The vote was 57-47. Under the provisions of Article VII, enough states had now ratified the Constitution to give it the force of law.

m. **June 25, 1788.** Virginia was the tenth state to ratify the Constitution. The vote was 89-79.

n. **July 2, 1788.** Cyrus Griffin, the president of Congress, recognized officially that nine states had ratified the Constitution, thereby establishing it as a new frame of government of the United States.

o. **July 26, 1788.** New York was the eleventh state to ratify the Constitution. The vote was 30-27.

p. **September 13, 1788.** Congress adopted an ordinance that named New York City as the site of the new government under the Constitution. The legislatures set dates for the elections of a President and members of Congress to be carried out according to the new Constitution.

q. **April 1, 1789.** The House of Representatives met for the first time. Thirty of the fifty-nine members of the House attended this first official session. The Congressmen elected Frederick A. Muhlenberg of Pennsylvania as the Speaker of the House of Representatives.

r. **April 6, 1789.** The Senate held its first official meeting. Nine of the twenty-two members attended. John Langdon was elected as temporary presiding officer. As the Constitution stipulated, the Senate counted the ballots cast by presidential electors and declared George Washington President of the United States. John Adams won the election for Vice President.

s. **April 30, 1789.** George Washington was inaugerated as first President of the United States. He took the oath of office prescribed by the Constitution.

t. **September 24, 1789.** The Judiciary Act of 1789 was signed into law. The Act created a three-tiered court system consisting of the U.S. Supreme Court, three U.S. Circuit Courts, and 13 U.S. District Courts. A Chief Justice and five Associate Justices sat on the Supreme Court.

u. **September 25, 1789.** Congress approved twelve proposed amendments to the Constitution, in the culmination of a process initiated in June 1789 by James Madison, a Congressman from Virginia. The amendments aimed to include protection for certain civil liberties and rights in the Constitution. The Secretary of State, Thomas Jefferson, sent these proposed amendments to the states. According to the Constitution, three-fourths of the states had to ratify these proposals in order for them to become binding constitutional amendments.

v. **September 26, 1789.** John Jay, one of the authors of *The Federalist,* assumed office as the first Chief Justice of the United States Supreme Court. Edmund Randolph, the man who introduced the Virginia Plan at the Constitutional Convention, was appointed the first Attorney General of the United States.

w. **November 21, 1789.** North Carolina was the twelfth state to ratify the Constitution. The vote was 194-77.

x. **May 29, 1790.** Rhode Island was the thirteenth state to ratify the Constitution. The vote was 34-32.

y. **March 4, 1791.** Vermont joined the Union as the fourteenth state.

z. **November 3, 1791.** Vermont became the tenth state to ratify ten of the proposed amendments to the Constitution.

aa. **December 15, 1791.** Virginia was the eleventh of the fourteen states of the Federal Union to ratify ten of the proposed amendments to the Constitution. Three-fourths of the states had ratified these ten proposed amendments, thereby officially adding them to the Constitution. These first ten amendments make up the Bill of Rights.

EXERCISES FOR LESSON II-12

Using Facts in the Timetable

1. **Arranging Events in Chronological Order.** The items in List (a) are NOT in chronological order. Rearrange these items in chronological order. Write your list of items in chronological order in the spaces provided under heading (b): Ten Events Listed in Chronological Order.

(a) **Scrambled List of Ten Events**

George Washington Inaugurated as First President of the United States of America
Beginning of the Constitutional Convention
Ratification of the Federal Bill of Rights
Great Compromise Between Larger and Smaller States
Shays' Rebellion Ended
Ratification of the Articles of Confederation
First *Federalist* paper Appeared in a Newspaper
Annapolis Convention
Ratification of the United States Constitution
Virginia Ratified the United States Constitution

(b) **Ten Events Listed in Chronological Order**

____

____

____

____

____

____

____

____

____

____

2. **Matching Activity.** Match the dates in **List A** with the appropriate events in **List B.** Write the numeral corresponding to each date in List A in the correct space next to an event in List B.

List A

I	March 1, 1781
II	September 3, 1783
III	August 7, 1786
IV	September 11, 1786
V	February 21, 1787
VI	May 25, 1787
VII	May 29, 1787
VIII	July 16, 1787
IX	August 6, 1787
X	September 17, 1787
XI	September 28, 1787
XII	June 21, 1788
XIII	September 13, 1788
XIV	April 6, 1789
XV	April 30, 1789
XVI	September 25, 1789
XVII	November 21, 1789
XVIII	May 29, 1790
XIX	November 3, 1791
XX	December 15, 1791

List B

____ (1) Start of the Constitutional Convention

____ (2) Federal Bill of Rights Ratified

____ (3) Congress Sent the Constitution to the States to Be Ratified or Rejected

____ (4) Treaty of Paris Signed

____ (5) Ratification of Articles of Confederation

____ (6) U.S. Constitution Ratified by Nine States

____ (7) Washington Inagurated as First President of the USA

____ (8) Delegates at the Constitutional Convention Signed the Final Draft of the Constitution

____ (9) Rhode Island Ratified the Constitution

____ (10) First Official Meeting of the U.S. Senate

3. **Sentence Completion Activity.** Write the correct word or words in each blank in the sentences below.

   a. The ____________________, signed by Great Britain and the United States, officially ended the American War for Independence.

   b. The first plan for government of the United States of America was called __________ ____________________________.

   c. No delegates from the state of _______ _____________ attended the Constitutional Convention.

   d. Delegates from five states participated in the ________________________, which issued a call for a convention in Philadelphia for the purpose of revising the Articles of Confederation.

   e. ____________________________
   and ___________________________
   wrote most of the ________________,
   which defended the new Constitution.

   f. The first ten amendments to the Constitution make up the ____________________.

   g. The first state to ratify the Constitution was ____________________________.

   h. The last of the original thirteen states to ratify the Constitution was ______________ . .

   i. Debates about a new form of government at the Constitutional Convention started with introduction of the ________________ Plan.

   j. The ______________________ settled a dispute between the larger and smaller states at the Constitutional Convention.

4. **Interpreting Facts in a Timetable.** Refer to facts in the "Timetable" to answer the questions below.

   a. Which of the events preceding the Constitutional Convention gave a legal foundation to the Convention? Explain.

   b. Which of the events following the Constitutional Convention indicate that the Constitution stimulated a public controversy? Explain.

   c. What examples in the "Timetable" show that Americans in the 1780s tried to settle public controversies through lawful procedures?

   d. Which ten events in the "Timetable" would you include in any brief summary of the creation and ratification of the Constitution as the most significant events in the adoption process? List these events in chronological order. Explain your choices.

CHAPTER III

Principles of Government in the Constitution

OVERVIEW FOR TEACHERS

This chapter contains fourteen lessons. Lessons 1 to 10 are about three basic principles of governmental organization and power embodied in the philosophy and words of the Constitution: (1) federalism, (2) separation of powers, and (3) judicial review. These principles are basic because they "underpin the entire document and establish the character of the American system of government."*

The chapter also contains four lessons on civil liberties and rights. These lessons help students to identify some of the ways the Constitution guarantees personal and political freedoms, to use vocabulary associated with limited government, and to think about civil liberties and rights in theory and practice.

The lessons in this chapter challenge students to find and interpret ideas in the Constitution. They also provide practice in building a vocabulary of constitutional terms that citizens should know. Finally, the lessons raise issues and questions that have concerned many citizens about the Constitution.

These lessons are not presented as a comprehensive treatment of constitutional principles. They are designed to supplement high school textbook treatments of main ideas of government in the Constitution.

LIST OF LESSONS IN THIS CHAPTER

III-1. The Principle of Federalism

III-2. What Does the Constitution Say About Federalism?

III-3. Key Terms for Understanding Federalism

III-4. Separation of Powers and Checks and Balances

III-5. The Veto Power: A Weapon in the System of Checks and Balances

III-6. What Does the Constitution Say About Separation of Powers and Checks and Balances?

III-7. Key Terms for Understanding Separation of Powers and Checks and Balances

III-8. The Principle of Judicial Review

III-9. How Should Judges Use Their Power?

III-10. Key Terms for Understanding the Judicial System

III-11. Constitutional Rights and Liberties

III-12. Opinions About Civil Liberties and Rights

III-13. What Does the Constitution Say About Civil Liberties and Rights?

III-14. Key Terms for Understanding Civil Liberties and Rights

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*Jack W. Peltason, *Corwin and Peltason's Understanding the Constitution, 8th ed. (New York: Holt, Rinehart and Winston, 1979), 18.*

III-1. THE PRINCIPLE OF FEDERALISM

LESSON PLAN AND NOTES FOR TEACHERS

Preview of Main Points

This lesson introduces students to three basic ideas about the principle of federalism. These are that federalism involves (1) two levels of government at work, (2) a constitutional division of powers, and (3) changing relationships between national and state powers. The lesson requires students to apply what they learn by working with examples of these key ideas.

Connection to Textbooks

Federalism is a complex idea. This lesson contains information along with practice exercises that reinforce textbook discussions of federalism. It further develops ideas about federalism found in textbooks. It can be used to introduce chapters or discussions about federalism or for practice and reinforcement after students have studied the topic.

Objectives

Students are expected to:

1. Know the basic definition and distinguishing characteristics of federalism.
2. Identify examples and non-examples of unitary and confederation government.
3. Explain the contributions to federalism of unitary and confederation approaches to government.
4. Identify examples according to the constitutional division of powers between the national government and state governments.
5. Understand that the constitutional division of national and state powers is not always clear and changes over time.

Suggestions for Teaching the Lesson

This is a concept-learning lesson. It is designed to present the concept of federalism to students through the use of definitions and examples. Students are asked to apply definitions to the organization and interpretation of information. Students complete a set of activities or "application exercises" at the end of each main section of the lesson and again at the end of the lesson.

Opening the Lesson

- Tell students the main point and purposes of the lesson, so that they know it focuses on a major principle of the U.S. Constitution—federalism.
- Discuss the statement by James Madison on the first page of the lesson. Ask them what this statement has to do with the principle of federalism.

Developing the Lesson

- Have students work independently through each of the main sections of the lesson. Each section is about a major feature of federalism.
- Require students to complete the application exercise that follows each of the sections of the lesson.
- You could discuss student responses to each of the application exercises before having them move on to the next section of the lesson. Or you may wish to have them complete all the exercises before discussing them together.

Concluding the Lesson

- Have students complete the application exercise at the end of the lesson—"Reviewing and Applying Knowledge About Federalism."
- Conduct a class discussion of this application exercise. Keep in mind that alternative answers to some of the items may be acceptable. Students should be able to present a defensible reason for choosing their answer.

III-1. THE PRINCIPLE OF FEDERALISM

In 1787 the framers of the Constitution created an unusual governmental structure. They designed a federal system of government that provides for the sharing of powers by the states and the national government.

The founders created a federal system to overcome a tough political obstacle. They needed to convince fiercely independent states to join together to create a strong central government.

Writing to George Washington before the Constitutional Convention, James Madison considered the dilemma. He said establishing "one simple republic" that would do away with the states would be "unattainable." Instead, Madison wrote, "I have sought for a middle ground which may at once support a due supremacy of national authority, and not exclude [the states]." Federalism was the answer.

Federalism refers to the division of governmental powers between the national and state governments. Each may directly govern through its own officials and laws. Both state and national governments derive their legitimacy from our Constitution, which endows each with supreme power over certain areas of government. Both state and federal governments must agree to changes in the Constitution.

Federalism is a central principle of the American Constitution. In this lesson you will study the key ideas of federalism:

- two levels of government at work;
- a constitutional division of powers;
- an often unclear and changing line between national and state powers.

Two Independent Levels of Government

The key idea of our federal system is two levels of government, national and state, with separate powers to act and govern independently. Thus, under federalism, the state of Oregon as well as the national government in Washington, has formal authority over its residents. Oregon residents must obey both Oregon laws and national laws. They must pay Oregon taxes and federal taxes.

This novel sytem of government differed from the two forms already known to the founders in 1787—the confederation and the unitary government. Each of these located government powers in a different place.

Unitary Government. The term unitary government describes a system whereby all formal political power rests with a central authority. The central government directly governs the people. Today France and Japan have unitary governments.

Unitary government may have geographical subdivisions. These smaller units mostly serve as administrative extensions of the central government. The central government may create or abolish them at will. France has regional units called "departments," but the central government in Paris sets up and runs each department.

EXERCISES FOR LESSON III-1

Apply Your Knowledge

Which government described below is a unitary government? Why?

1. Great Britain, consisting of England, Scotland, Wales, and Northern Ireland, is controlled by a national government in London, the capital. Great Britain also has local governments, similar to those in American counties and cities. These can be changed at will by the government in London. Is this a unitary system? ____________ Explain.

   ____

   ____

   ____

2. Mexico has a national government located in Mexico City, the capital. A President and a Congress direct the national government. Mexico also has twenty-nine states with their own separate Constitutions. Each state has independent powers to collect taxes in its territory. Is this a unitary government? ____________ Explain.

   ____

   ____

   ____

A Confederation. The other form of government known to the founders in 1787 was confederation. A confederation is an alliance of independent states. In a confederation the states create national government that has very limited powers. The states retain most of the power, granting the national government only limited independence. The national government does not directly govern the people. The national government can do only what the states permit.

The founders understood this approach very well. The Articles of Confederation, in operation from 1781 to 1788, established the confederation form of government. Under the Articles, for example, only the states had the power to tax people directly, leaving the national government dependent on state grants for revenue.

EXERCISES FOR LESSON III-1

Apply Your Knowledge

1. In a confederation government, the central government holds all power. TRUE FALSE
2. In 1861 eleven slave states seceded from the Union and created their own government and constitution. The preamble to their constitution declared: "We, the people of the Confederate states, each State acting in its sovereign and independent character. . .do ordain and establish this Constitution."

   a. According to the preamble who "acted" to create the Confederate constitution?

   ____

   ____

   b. What evidence in the preamble suggests that the constitution was creating a confederate form of government?

   ____

   ____

Characteristics of Federalism. The founders borrowed ideas from both the confederation and unitary forms of government in creating a federation or "federal republic," as they called it. It was truly a new idea. No one at the Philadelphia convention could predict how a federal system would operate. At that time, few delegates even used the word "federalism" to describe the plan they were designing. The founders realized, however, that they had to divide the powers of government between a national government and the states in a new way.

Since 1787 many nations have adopted federal systems of government. Canada, Australia, India, Brazil, Nigeria, Germany, and Mexico have federal forms of government. These systems have adopted varying arrangements outlining the relationships between the states, or lesser governments, and the central governments.

However, all true federal systems share four characteristics. These characteristics reflect ideas drawn from both the unitary and confederation forms of government.

First, all federal systems give both the national government and states some powers to govern the people directly.

Second, federal systems recognize that the states have certain rights and powers beyond the control of the national government.

Third, federal systems guarantee the legal equality and existence of each state. Each state has a right to equal treatment regardless of its size or population. But a state may not always have equal political power if differences in population affect proportional representation.

Fourth, federal systems rely on judicial bodies to interpret the meaning of their constitution and to settle disputes arising between the two levels of government (national and state) and between states.

EXERCISES FOR LESSON III-1

Apply Your Knowledge

Several features of our federal system are presented below. Which characteristic of federalism described above, the "first," "second," "third," or "fourth," does each example illustrate? Be prepared to explain your answers.

1. ________ Montana, with a population of 786,690, has the same number of U.S. Senators as California, with a population of 23,668,562.
2. ________ In 1910, the Supreme Court ruled that the national government could not prevent the state of Oklahoma from moving its capital from one city to another.
3. ________ Article III of the Constitution says, that the judicial power of the Supreme Court "shall extend. . .to Controversies between two or more states."
4. ________ In 1981 Congress passed a law requiring every American male to register for the draft upon reaching the age of 18.
5. ________ Article IV of the Constitution prohibits Congress from creating a new state from territory belonging to an existing state without the consent of the contributing state.

Division of Powers by the Constitution

Both the national government and the states have powers under our federal system. Our Constitution divides these powers between the levels of government.

Article I, for instance, reserves the power to coin money and to make treaties with other nations for the national government. State governments have traditionally administered such areas as public health, fire and police protection, local elections, and marriages and divorces.

What prevents states from ignoring or contradicting the Constitution when they pass laws? Article VI of the Constitution says that the Constitution and "laws of the United States. . . shall be the Supreme Law of the Land." This statement, known as the supremacy clause, makes federalism work by preventing chaos.

The supremacy clause means that while the powers of the national government are limited, within its field the national government is supreme. Thus, the states can neither ignore national laws nor use their powers to oppose national policies or the Constitution itself. In fact, each state official must swear an oath to uphold the U.S. Constitution.

Table 1 gives examples of how the Constitution distributes powers between the national government and the states. The table shows that the Constitution grants some powers exclusively to the national government, some powers exclusively to the state governments, and some powers to both. Also notice that the Constitution withholds some powers from the national government, denies the state governments others, and prevents both from exercising still more powers.

EXERCISES FOR LESSON III-1

Apply Your Knowledge

Use table I, page 122, to answer these questions.

1. Which government, federal or state, is:
   - a. granted power to establish post offices?

     ______

   - b. denied power to enter into treaties?

     ______

   - c. reserved power to take measures for public health and safety? ______
   - d. denied power to grant title of nobility?

     ______

   - e. granted power to borrow money? ______
   - f. denied power to discriminate against citizens because of their race? ______

2. Which government, federal or state, has the power to provide for an army and a navy?

   ______

   Find this power in the Constitution (Clue: look under Article I). What Section contains it?

   ______

   Exactly what does the Constitution say? ______

   ______

   Are there any limitations on this power (Clue: look under the Bill of Rights). What amendments are relevant? ______

   ______

   Exactly what do these amendments say? ______

   ______

   ______

   Does the Constitution prevent state or federal government from prohibiting the organization of a citizen's army? ______

   What is a citizens' army called? ______

   Which type of government does the Constitution entitle to organize one? ______ Where does this appear in the Constitution? ______

3. The Constitution denies which type of government, federal or state, the power to impair obligations of contracts? ______

   Find this restriction in the Constitution (Clue: look under Article I). What Section contains it?

   ______

   Exactly what does the Constitution say about contracts?

   ______

   ______

   ______

   ______

4. Table 1 says state governments can exert powers the Constitution neither gives to the national government nor prohibits the states from using. Which amendment confirms this fact? ______

A Changing Division of Powers

Table 1 is useful, but it should not mislead you. In some cases the division of powers is as clear as the table. For example, no one disputes that only the national government has the power to coin money. However, determining which government has jurisdiction in other cases is not always so easy.

TABLE 1
Examples of How the Constitution Divides Powers

	TO NATIONAL GOVERNMENT	TO STATE GOVERNMENTS	TO BOTH LEVELS OF GOVERNMENT
POWERS GRANTED	To coin money To conduct foreign relations To regulate commerce with foreign nations & among states To provide an army and a navy To declare war To establish courts inferior to the Supreme Court To establish post offices To make laws necessary and proper to carry out the foregoing powers	To establish local governments To regulate commerce within a state To conduct elections To ratify amendments to the federal Constitution To take measures for public health, safety, & morals To exert powers the Constitution does not delegate to the national government or prohibit the states from using	To tax To borrow money To establish courts To make and enforce laws To charter banks and corporations To spend money for the general welfare To take private property for public purposes, with just compensation
POWERS DENIED	To tax articles exported from one state to another To violate the Bill of Rights To change state boundaries	To tax imports or exports To coin money To enter into treaties To impair obligations of contracts To abridge the privileges or immunities of citizens (14th Amendment)	To grant titles of nobility To permit slavery (13th Amendment) To deny citizens the right to vote because of race, color, or previous servitude (14th Amendment) To deny citizens the right to vote because of sex (19th Amendment)

Table adapted from Robert L. Lineberry, *Government in America* (Boston: Little, Brown and Company, 1981), p. 93.

Table 1 shows that state governments may regulate commerce within a state and that the national government may regulate commerce among the states. Suppose you own a meat packing company which only packs meat in Illinois. We know your state government has a right to regulate your company. But, does the federal government also have a right to do so? The answer to that question will depend on a number of factors. Even though you may only pack meat in one state, your company may well engage in interstate commerce. If any of the meat your company buys comes from another state your company enters into interstate commerce. Similarly, if your company sells meat out-of-state it engages in interstate commerce. If your company operates in the realm of interstate commerce then it is subject to regulation by the federal government.

Questions about the regulation of the economy and commerce have been important throughout the history of the United States. The roles of the national government and the state governments have changed a number of times in the last 200 years, as have the positions of the Supreme Court on this issue. Today both the state governments and the national government regulate most of the economy. Federalism has created a system flexible enough to change as the country and the economy have changed.

Many factors have influenced developments in federalism. Some have resulted from changes in statutory law and amendments to the Constitution. Others have resulted from changes in legal and constitutional interpretation. Lawyers, legal scholars, judges, and especially members of the Supreme Court have had new ideas about how laws and constitutional clauses ought to be interpreted and enforced.

During the course of American history, for example, Congress has passed laws that have changed the nature of federalism. Many of these laws have strengthened the role of the national government in the economy. In the 1930s, for example, Congress prohibited child labor in most of the nation. Previously, this matter had been left solely up to the discretion of the individual states. Similarly, during the Great Depression of the 1930s Congress passed legislation protecting the right of workers to organize labor unions and to go out on strike. The Securities and Exchange Commission (SEC), created in 1934, regulated the sale of stocks and bonds. Any company selling its stock to the public had to register with the SEC and to provide information proving the company would not defraud stockholders. In 1970 Congress set up the Occupational Safety and Health Administration (OSHA), "to assure so far as possible every working man and woman in the nation safe and healthful working conditions."

EXERCISES FOR LESSON III-1

Apply Your Knowledge

1. The division of powers in our federal system does not change.

   TRUE FALSE

2. The national government and the states have battled over the power to ____________________ for years.

3. Alexander Hamilton discussed the benefits of federalism in *The Federalist*. He said that people could shift their support between the national and state levels of government as needed to keep the powers of the two in balance. "If their rights are invaded by either, they can make use of the other as the instrument of redress."

   a. Did Hamilton favor a federal form of government? ____________________

   b. Would Hamilton agree that the division of powers between the national government and the states could change? ______________
   Explain. ____________________

   ____

   ____

   ____

   ____

   ____

   ____

   c. What role did Hamilton believe the people could play in changing the division of powers between state and federal government?

   ____

   ____

   ____

   ____

   ____

   ____

Reviewing and Applying Knowledge About Federalism

You have learned that federalism involves two types of government (national and state) directly governing citizens. You also learned how a federal system differs from unitary and confederation governments.

1. List the four characteristics found in all true federal systems.

   a. ______________________________

   b. ______________________________

   c. ______________________________

   d. ______________________________

2. Study diagram 1. Use the information to answer these questions.

   a. What does diagram 1 describe? __________

   ____

   Which of the statements about diagram 1 are True or False? Be prepared to explain your answers.

   b. A unitary government directly governs the people.

   TRUE FALSE

   c. In a federal system the national government has no power over the states.

   TRUE FALSE

   d. In a confederation the central government can directly govern the people.

   TRUE FALSE

   e. In a federal system only the states exercise power over the people.

   TRUE FALSE

3. Table 1 shows the powers granted and denied the national and state governments. Given this division of powers indicate whether the hypothetical actions listed below are constitutional or not.

   a. The United States declares war on a foregin nation.

   YES NO

   b. The State of Minnesota sets up separate schools for Native Americans in the state.

   YES NO

   c. Congress spends $5 billion for new army rifles and tanks.

   YES NO

   d. The State of Delaware levies an import tax on all foreign cars coming into the state.

   YES NO

   e. The California Board of Elections sets new hours and regulations for voting in the state.

   YES NO

   f. Congress passes a law moving the boundary between Idaho and Montana.

   YES NO

4. **Writing in *The Federalist*, James Madison said that both the state and the national governments "are in fact but different agents and trustees of the people, constituted with different powers."**

   a. What did Madison say about the source of state and national government powers?

   ____

   ____

   ____

   ____

   b. Is the Madison quote an example of the idea of federalism? __________ Explain.

   ____

   ____

   ____

   ____

5. You have learned that the Constitution divides powers between the national government and the states in our federal system.

   a. What is the "Supremacy Clause"? __________

   ____

   ____

   ____

   ____

   b. Where is this clause found in the Constitution?

   ____

   ____

   ____

6. You have learned that the limits of national and state government jurisdictions are sometimes unclear and disputed. The case study below is an

example of the kind of issue that frequently arises in a federal system. Read the case study and answer the questions following it.

The Concorde Dispute

In 1976, France and Britain wanted to land their new supersonic transport plane, the Concorde, at American airports. Environmental groups in America opposed the idea, objecting to the planes as too noisy.

President Ford's Secretary of Transportation decided the Concorde could land at New York's Kennedy Airport. However, the national government did not own Kennedy Airport. State government officials in New York and New Jersey ran the airport. They refused to let the Concorde land at their airport.

The national government took the state officials to court. Federal courts eventually decided in favor of the national government. The courts ruled that the national government had the authority to let the planes land in New York.

a. What power did both national and state officials claim to have? ____________________

____

____

____

b. Who settled the dispute over powers? ____________

____

____

c. Which government won the dispute? ____________

____

____

d. Is this case an example of federalism in practice?

____

Explain. ______________________________

____

____

____

____

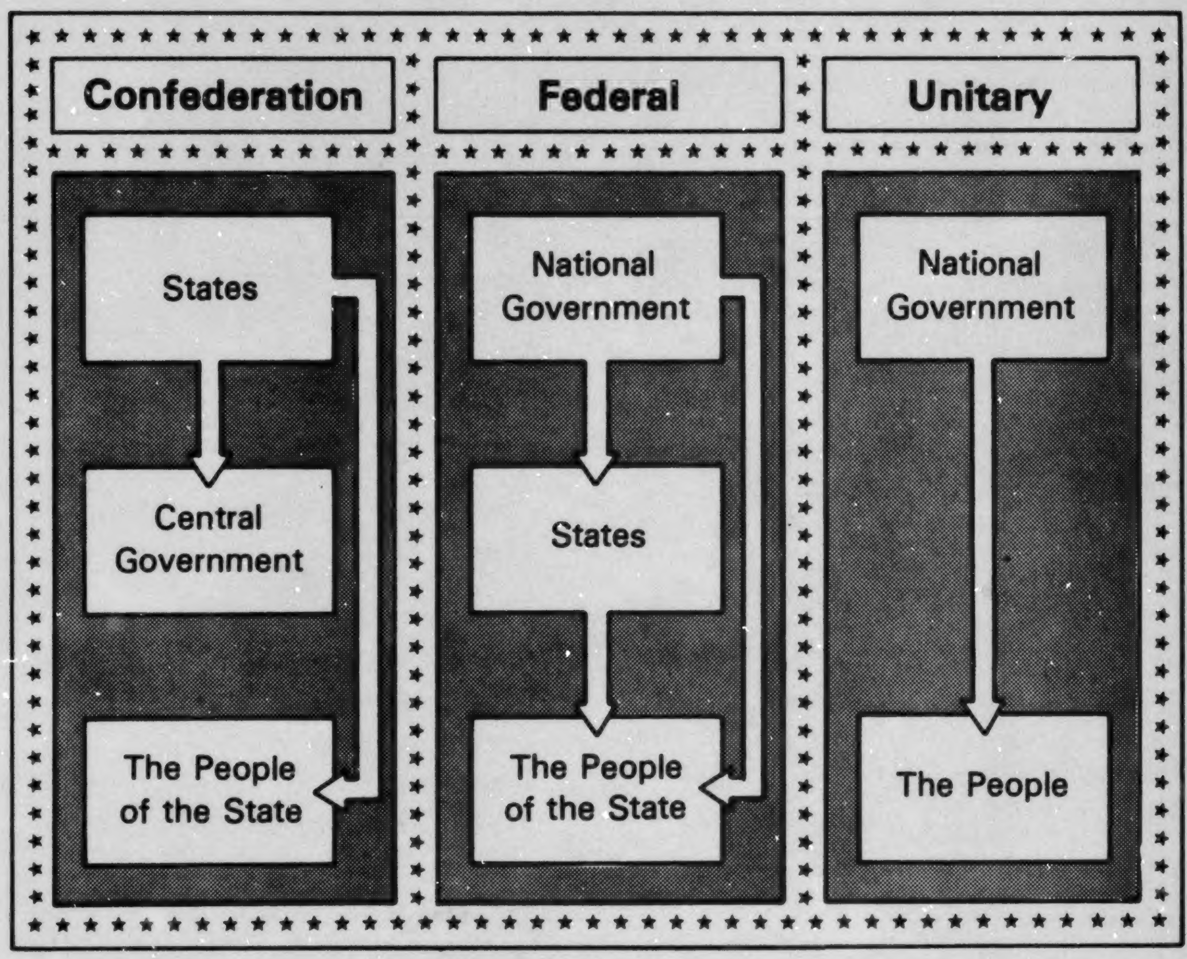
____

____

____

____

Different Forms of Government


Confederation
Federal
Unitary
States
Central Government
The People of the State
National Government
States
The People of the State
National Government
The People

III-2. WHAT DOES THE CONSTITUTION SAY ABOUT FEDERALISM?

LESSON PLAN AND NOTES FOR TEACHERS

Preview of Main Points

The purpose of this lesson is to increase students' knowledge of a main constitutional principle—federalism. In addition, students should become more familiar with certain parts of the Constitution that pertain to federalism.

Connection to Textbooks

This lesson can be used to reinforce American government textbook treatments of the constitutional principle of federalism. The lesson can be used to supplement American history textbook discussions of main principles of the Constitution, which usually follow treatment of the Constitutional Convention.

Objectives

Students are expected to:

1. Demonstrate knowledge of the constitutional principle of federalism by responding correctly with a "YES" or "NO" answer to each item in this lesson.
2. Support their response to each item by listing the correct reference in the U.S. Constitution (Article and Section).
3. Increase knowledge of which parts of the Constitution pertain to the principle of federalism.
4. Practice skills in locating and comprehending information in the U.S. Constitution.
5. Increase awareness of how the Constitution applies to the concerns of citizens.

Suggestions for Teaching the Lesson

Opening the Lesson

- Inform students of the main points of the lesson.
- Make sure that students understand the directions for this lesson.

Developing the Lesson

- Have students work individually or in small groups to complete the items in the exercise.
- You may wish to have different students report their answers to the items in this lesson. An alternative is to distribute copies of the answers, when appropriate, so that students can check their responses against the correct answers.

Concluding the Lesson

- Ask students to explain what each item in the exercise has to do with the principles of federalism. By doing this, students can demonstrate comprehension of the idea of federalism.
- You may wish to have students examine and discuss in more detail issues and questions associated with the items in this exercise.

ANSWER SHEET FOR LESSON III-2

1. NO, Article I, Section 10, Clause 1.
2. YES, Article I, Section 8, Clause 3.
3. NO, Article I, Section 8, Clause 3; Article IV, Section 2, Clause 1 might also apply.
4. NO, Article VI, Section 2; also Commerce Clause—Article I, Section 8, Clause 3.
5. NO, Article I, Section 8, Clause 7.
6. NO, Article I, Section 10, Clause 2.
7. NO, Article IV, Section 3, Clause 1.
8. YES, Article IV, Section 2, Clause 3.
9. NO, Article IV, Section 1.
10. NO, Amendment X. (NOTE: The authority to operate public schools is a power not given to the national government nor prohibited the states by the Constitution. Thus state and local governments have power under the Constitution to operate public schools.)

III-2. WHAT DOES THE CONSTITUTION SAY ABOUT FEDERALISM

Read each of the following statements. Decide whether or not each statement describes a situation in which the officials or institutions involved comply with the U.S. Constitution. **If so,** answer YES. **If not,** answer NO. Circle the correct answer under each statement.

Identify the number of the Article and Section or the Amendment of the Constitution that supports your answer. Write this information on the appropriate line below each item.

CLUE: Answers to these items can be found in Articles I, IV, and VI or in Amendment X.

1. Michigan, hard hit by a recession, has decided to issue coins made from old cars in order to stimulate the economy.

   YES NO

   ____

2. Congress passes a law imposing new regulations upon airlines engaged in interstate commerce (doing business in several states and across state lines).

   YES NO

   ____

3. Colorado's Scenic Drive Highway has become overcrowded. The state legislature passes a law forbidding out-of-state drivers from using the highway.

   YES NO

   ____

4. The U.S. Supreme Court's upholding of Congress' power to regulate the strip mining of coal upset the governor of North Dakota very much. The governor has announced that he will not allow the enforcement of the law in his state.

   YES NO

   ____

5. Displeased with the U.S. Postal Service, the state legislature of Nevada has passed a law creating the Nevada Postal Service.

   YES NO

   ____

6. The state of Washington has placed a tax on goods imported and exported through its seaports.

   YES NO

   ____

7. The neighboring state of Illinois has annexed Lake County, Indiana.

   YES NO

   ____

8. The Governor of Montana requests that Kentucky return John Doe to Montana. Doe, convicted of murder in Montana, had fled to Kentucky where local authorities captured him.

   YES NO

   ____

9. John Jones has been legally adopted in the state of Arkansas. After the Jones family moves to Georgia, the Georgia State Welfare Agency takes John from his adoptive parents. The Agency claims it does not recognize Arkansas adoption laws.

   YES NO

   ____

10. The federal government passes a law to establish a single national system of public high schools.

    YES NO

    ____

III-3. KEY TERMS FOR UNDERSTANDING FEDERALISM

LESSON PLAN AND NOTES FOR TEACHERS

Preview of Main Points

The purpose of this lesson is to help students build a basic vocabulary that may help them understand the Constitution. The key words in this lesson pertain to the constitutional principle of federalism. The lesson is designed to help students acquire and/or reinforce knowledge of words associated with the principle of federalism.

Connection to Textbooks

The words in this lesson are related to discussions of federalism found in American government, civics, and history textbooks. Practice in using these words may help students to read certain parts of their textbooks more effectively.

Objectives

Students are expected to:

1. Demonstrate comprehension of key words about federalism by supplying the missing words in the lists of statements and using these key words to complete the crossword puzzle on the last page of the lesson.
2. Discuss these key words so as to demonstrate knowledge of the principle of federalism.

Suggestions for Teaching the Lesson

Opening the Lesson

- Tell students that the point of this lesson is to provide practice in using key words about an important constitutional principle, federalism.
- Remind students of the need to learn key words about aspects of the Constitution. This enables them to communicate better with one another about a topic of importance to every citizen.

Developing the Lesson

- Distribute the worksheets with the Sentence Completion Activity crossword puzzle. The list of words for the activity is optional. Some students may find the lesson less difficult if the words are provided for them.
- Have students work individually or in small groups to complete the worksheets.
- Tell students to write the correct word or phrase on each blank in the two lists of sentences on page 130 and to complete the crossword puzzle on page 131.
- Suggest to students that they might want to use the glossary in their textbook, or other pertinent reference material, to help them complete this lesson.

Concluding the Lesson

- Check answers by asking students to report their responses to the crossword puzzle.
- Ask students to elaborate upon their responses by explaining, in their own words, the meaning of particular key words of this lesson. Students also might be asked to supply their own examples of certain words or to tell how a particular term may pertain to the concerns of citizens.

ANSWERS TO CROSSWORD PUZZLE

Across

5. tenth
6. confederation
11. commerce
12. faith and credit

Down

1. centralization
2. supremacy
3. implied
4. exclusive
7. federalism
8. elastic
9. grants in aid
10. concurrent

III-3. KEY TERMS FOR UNDERSTANDING FEDERALISM

Read each of the sentences in the following two lists, which are labeled "Across" and "Down." **What word or words should be placed in each of the blanks?** Write the correct word or words in the appropriate spaces on the crossword puzzle on page 131.

Across

5. The ________ ____________ Amendment confirms the limitations on the national government's powers and reserves other powers for the states.

6. A ________________________ is an association of sovereign states.

11. Article I, Section 8, Clause 3, gives Congress its ____________________ power, an important power that facilitates the growth of national government's authority.

12. "Full ______ ____________________ shall be given in each state to the public Acts. . .of every other state," according to Article IV, Section 1, of the U.S. Constitution.

Down

1. The ______________________ of power has been a source of conflict between the federal and state governments in the American system of federalism.

2. For the Federal Union to succeed, the U.S. Constitution and national laws must have __________________________ over the constitutions and laws of the states.

3. The national government's powers are either delegated or ________________________ .

4. Powers possessed only by the national government are referred to as ______________________ powers.

7. __________________________ refers to a system of government based on dividing or distributing powers between the national and state governments.

8. The ______________________________ clause, or the "necessary and proper clause," has permitted the national government to expand greatly its powers within the federal system.

9. Through ______________________, the national government has entered areas of government once considered the exclusive concern of the state governments.

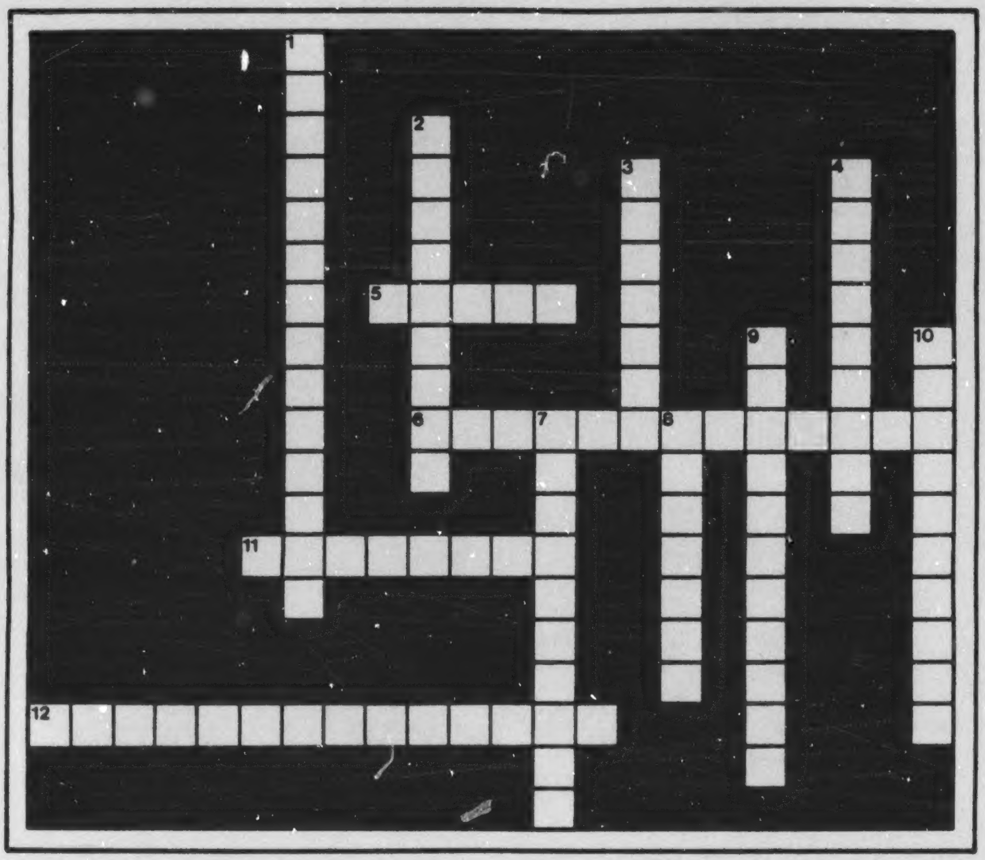
10. The power to tax, possessed by both the state and national governments, is an example of a ______________________________ power.

List of Words

commerce
federalism
elastic
Tenth
supremacy
implied

concurrent
faith and credit
exclusive
grants in aid
confederation
centralization

Federalism


1
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III-4. SEPARATION OF POWERS AND CHECKS AND BALANCES

LESSON PLAN AND NOTES FOR TEACHERS

Preview of Main Points

This lesson introduces students to several basic ideas about separation of powers and checks and balances. The lesson explains **how** the Constitution separates the three branches of government, the meaning of checks and balances, and how these two principles combine to form a government of separate institutions, which also share powers.

Connection to Textbooks

This lesson can be used to deepen student understanding of separation of powers and checks and balances. The lesson contains some ideas about the two principles not found in textbooks. It can be used to introduce discussions about the two principles or for practice and reinforcement after students have studied the principles in their textbook.

Objectives

Students are expected to:

1. Know the basic definition and distinguishing characteristics of separation of powers and checks and balances.
2. Use information in tables to identify main characteristics of separation of powers and checks and balances.
3. Interpret relevant quotations regarding separation of powers.
4. Distinguish examples and non-examples of checks and balances.
5. Identify portions of the U.S. Constitution that establish separation of powers and checks and balances.

Suggestions for Teaching the Lesson

This is a concept-learning lesson. It is designed to present systematically the concepts of separation of powers and checks and balances to students through the use of definitions and examples. Students are asked to apply definitions to the organization and interpretation of information. Students complete a set of activities or "application exercises" at the end of individual sections of the lesson and again at the end of the lesson.

Opening the Lesson

- Tell the students the main point and purposes of the lesson, so that they know it focuses on two major principles of the Constitution—separation of powers and checks and balances.
- Discuss the statement by James Madison on the first page of the lesson. Ask students what Madison meant by obliging the government to control itself. Ask them what Madison's statement has to do with separation of powers and checks and balances.

Developing the Lesson

- Have students work through each of the main sections of the lesson. Each section is about major features of separation of powers and checks and balances.
- Require students to complete the application exercise that follows each section of the lesson.
- You could discuss student responses to each of the application exercises before having them move on to the next section of the lesson. Or you may wish to have them complete all the exercises before discussing them together.

Concluding the Lesson

- Have students complete the application exercise at the end of the lesson—"Reviewing and Applying Knowledge About Separation of Powers and Checks and Balances."
- Conduct a class discussion of this application exercise.

III-4. SEPARATION OF POWERS AND CHECKS AND BALANCES

The founders were not very optimistic about their fellow citizens. They believed that people, if left unchecked, would seek power and try to dominate each other. Ben Franklin spoke for most of the founders when he said, "There are two passions which have a powerful influence on the affairs of men: the love of power and the love of money." Alexander Hamilton said much the same thing: "Men love power."

Given this view of human nature, the founders faced a dilemma. How could they design a government run by the people and yet prevent abuses of power by the same government as individuals sought to gain power, wealth, or glory at each others' expense?

James Madison summed up the problem nicely: "In framing a government, which is to be administered by men over men, the great difficulty lies in this: You must first enable the government to control the governed; and in the next place, oblige it to control itself."

The founders built two principles into the Constitution to deal with this dilemma:

(1) a separation of powers among three branches of government.

(2) a system of checks and balances.

These two principles are related but distinct. They are not the same. How does each principle work? What combined influence do these two constitutional principles exert?

Separation of Powers

Through the separation of powers, the Constitution distributes powers of national government among three independent branches of government: the legislative, the executive, and the judicial. The founders believed that creating separate branches of government would help limit the powers of the national government and prevent tyranny.

How is power separated among the three branches? The legislative branch (Congress) has power, under the Constitution, to make laws. The executive branch, headed by the President, executes or carries out laws. The Constitution established the Supreme Court to head the judicial branch, which interprets and applies the law in federal court cases.

How is the separation of powers achieved? The Constitution separates the branches of the national government in three ways.

(1) In their source of authority.

(2) In how officials in each branch are chosen.

(3) In how people in each branch hold office.

Source of Authority. Each branch of the national government derives its authority directly from the Constitution, not from one of the other branches. Thus, in our system the President's power does not come from Congress or the courts; it comes directly from the Constitution. This means no branch can take away the powers of any other branch.

EXERCISES FOR LESSON III-4

Apply Your Knowledge

The Constitution is the source of authority for each branch of government. Which Article of the Constitution creates the executive branch? ____________________ the legislative branch? ____________________ the judicial branch? ____________________.

Selection of Officials. Top officials in each branch of the national government reach office by different procedures. This is a second way in which each of the three branches are kept separate.

The people across the nation elect the President indirectly through the electoral college system.

The people in each state or district directly elect their congressional representative.

Justices of the Supreme Court and other federal judges are an exception. The President appoints them with the approval of the Senate. However, once appointed, they may serve for life. They can be removed only by the impeachment process. In our nearly 200-year history, only four judges have lost office this way. Lifetime tenure helps keep judges independent of the other two branches, and from the electorate.

Different selection procedures give government officials political independence.

EXERCISES FOR III-4

Apply Your Knowledge

Writing in *The Federalist* (#51) James Madison argued:

> In order to lay a due foundation for that separate and distinct exercise of the different powers of government...it is evident that each department [branch] should have a will of its own; and consequently should be so constituted, that the members of each should have as little agency as possible in the appointment of the members of the others.

1. In England, the legislative branch (called Parliament) chooses the top executive official (called the

Prime Minister). Would Madison have approved this procedure for the United States? ________
Explain. ______________________________

____

____

____

____

____

2. Why did Madison think it important to choose officials of each branch by different procedures?

____

____

____

____

____

Holding Office. Finally, the three branches are kept separate by having officials of each branch hold office independently of the other branches for a specified period of time.

Thus, Senators serve six-year terms and Representatives two-year terms. The President cannot dissolve Congress or remove Senators or Representatives from office.

The President is elected for a four-year term and can be removed by Congress only through the long, difficult process of trial and conviction. However, one President, Richard M. Nixon, resigned the office to avoid impeachment. Federal judges serve for life unless impeached.

We take this feature of our national government for granted. Yet our system differs from other types of government. Many nations use the parliamentary system of government. In a parliamentary system, there are three branches of government, but the legislative branch is supreme. The executive branch, usually called the Cabinet and headed by a Prime Minister, stays in power only so long as it retains the confidence of the legislature.

Japan has a parliamentary system. The Japanese Constitution states that "the Prime Minister shall be designated from among the members of the **Diet** [Parliament] by a resolution of the **Diet**." The Constitution also says that, "If the House of Representatives passes a non-confidence resolution, or rejects a confidence resolution, the Cabinet shall resign."

EXERCISES FOR LESSON III-4

Apply Your Knowledge

Use what you have learned about separation of powers to answer the following questions.

1. Our Constitution states: "The House of Representatives shall be composed of members chosen every second year by the people of the several states."

   Why is this an example of separation of powers?

   ____

   ____

   ____

   ____

   ____

2. Our Constitution states: "...a President of the United States...shall hold his office during the term of four years."

   Why is this an example of separation of powers?

   ____

   ____

   ____

   ____

   ____

Checks and Balances

The founders established three branches of government in the Constitution. They ensured that the offices of each branch would be kept separate by (1) the source of their authority, (2) the process of their selection, and (3) the terms of their holding office.

The founders also created a system of checks and balances. This granted each branch of the national government powers to "check" or "balance" the actions of the others. Under checks and balances, each branch plays some role in the actions of the others. One scholar said this system is "as elaborate and delicate as a spider's web." Here are some examples:

- The Senate must approve most of the people the President nominates for top jobs in government.
- The Constitution gives the President power to recommend legislation and new programs to Congress.
- The President can veto bills passed by Congress, but Congress can override a Presidential veto with two-thirds majority votes in each chamber.

- The Supreme Court can hear court cases which challenge laws passed by Congress or actions taken by the President and can declare those laws unconstitutional.

EXERCISES FOR LESSON III-4

Apply Your Knowledge

Study table 1 (page 136) and answer these questions.

1. What is the main idea of table 1? ___________

____

2. According to table 1, are the statements below true or false? Be prepared to explain your answers.

   a. The concept of checks and balances is an abstract, rarely used, idea.
   TRUE FALSE

   b. Impeachment plays a role in the system of checks and balances.
   TRUE FALSE

   c. Congress overrides most Presidential vetoes.
   TRUE FALSE

   d. The Supreme Court can declare acts of Congress unconstitutional.
   TRUE FALSE

Conclusion—Shared Powers

In combination the principles of separation of powers and of checks and balances promote a government of separated institutions (executive, legislative, judicial) that share power. Thus, each separate branch of the national government has some influence over the actions of the others. No branch can do its job without some cooperation from the others.

Some people have criticized this arrangement. They argue it creates confusion, causes delays, and contributes to a lack of direction in American government. Presidents have often complained that separation of powers and checks and balances make it difficult to accomplish things. President Lyndon Johnson, for example, once warned that, "Divided government creates the natural climate for standstill government."

Defenders of the system admit that it can sometimes be inefficient. They argue, however, that inefficiency is the price that must be paid to safeguard against potential abuse of the powers of government. They agree with James Madison that "ambition must be made to counter ambition" by giving each separate branch some authority to oversee the activities of the other branches.

EXERCISES FOR LESSON III-4

Reviewing and Applying Knowledge About Separation of Powers and Checks and Balances

1. List three ways the Constitution separates the branches of the national government.

   a. _______________________________________

   ____

   b. _______________________________________

   ____

   c. _______________________________________

   ____

2. James Madison, writing in *The Federalist* (#47), declared:

> No political truth is certainly of greater intrinsic value, or is stamped with the authority of more enlightened patrons of liberty, than that...the accumulation of all powers, legislative, executive, and judiciary, in the same hands...may justly be pronounced the very definition of tyranny.

   a. Is Madison talking about the principle of separation of powers or the principle of checks and balances?

   ____

   Explain. _______________________________

   ____

   ____

   ____

   b. Why does Madison believe the separation of powers is necessary?

   ____

   ____

   ____

3. In the Federal Republic of Germany the legislature (called the **Bundestag**) elects the executive head of the government (called the **Chancellor**).

Is this an example of separation of powers?

Explain.

4. Put an "X" by each item that is an example of checks and balances. Be prepared to explain your choices.
   - a. ____ The Senate must approve all treaties made by the President.
   - b. ____ The First Amendment protects freedom of speech.
   - c. ____ All presidential programs depend upon Congress appropriating the money to fund them.
   - d. ____ Congress may propose amendments to the Constitution with two-thirds majority votes of each chamber.

5. Diagram 1 (page 137) summarizes how the three institutions of our national government created in accordance with the separation of powers can check and balance one another.

Study diagram 1 and answer these questions.

a. Which branch confirms the President's appointments?

b. How can the judicial branch check the actions of the legislative branch?

c. How can the legislative branch check the actions of the judicial branch?

d. How can the executive branch influence the judicial branch?

TABLE 1
The Use of Checks and Balances, 1789-1981

There were 2391 Presidential vetoes of congressional acts.

Congress subsequently overruled 75 of those vetoes.

The Supreme Court ruled 85 congressional acts or parts of acts unconstitutional.

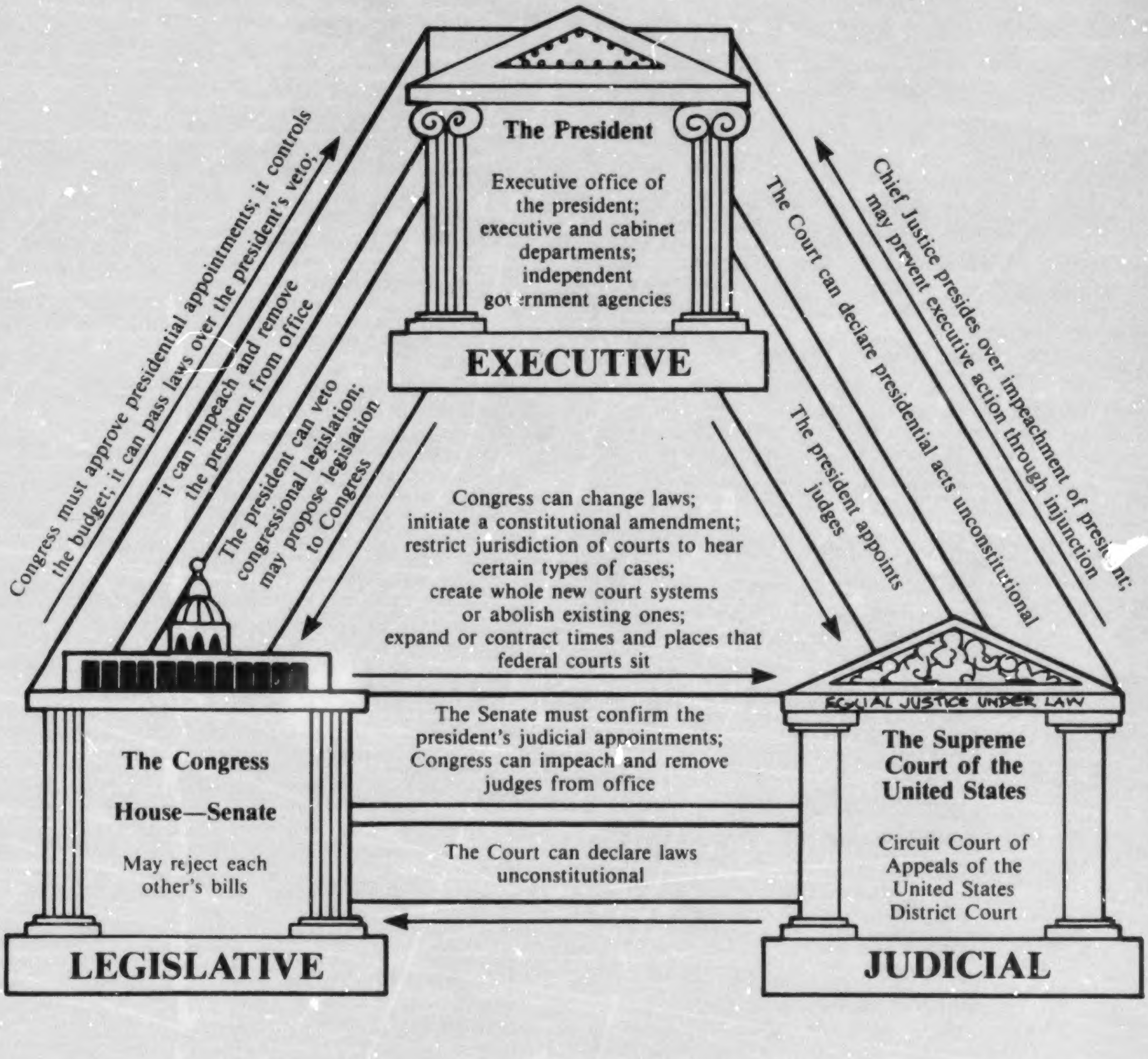
The Senate refused to confirm 27 nominees to the Supreme Court (out of a total of 138 nominees).

Congress impeached 9 federal judges; of these, 4 were convicted. The Senate rejected 8 Cabinet nominations.

Source: Senate Library, *Presidential Vetoes* (New York: Greenwood Press, 1968); *Congressional Quarterly;* and *Current American Government* (Washington, D.C.: *Congressional Quarterly,* Spring 1973), p. 106.

DIAGRAM 1

Separation of Powers and Checks and Balances


The President
Executive office of the president; executive and cabinet departments; independent government agencies
EXECUTIVE
Congress must approve presidential appointments; it controls the budget; it can pass laws over the president's veto;
it can impeach and remove the president from office
The president can veto congressional legislation; may propose legislation to Congress
Chief Justice presides over impeachment of president; may prevent executive action through injunction
The Court can declare presidential acts unconstitutional
The president appoints judges
Congress can change laws; initiate a constitutional amendment; restrict jurisdiction of courts to hear certain types of cases; create whole new court systems or abolish existing ones; expand or contract times and places that federal courts sit
The Senate must confirm the president's judicial appointments; Congress can impeach and remove judges from office
The Court can declare laws unconstitutional
The Congress
House—Senate
May reject each other's bills
LEGISLATIVE
EQUAL JUSTICE UNDER LAW
The Supreme Court of the United States
Circuit Court of Appeals of the United States District Court
JUDICIAL

III-5. THE VETO POWER: A WEAPON IN THE SYSTEM OF CHECKS AND BALANCES

LESSON PLAN AND NOTES FOR TEACHERS

Preview of the Main Points

This lesson contains a short lecture on the role of the veto in the system of checks and balances, and a table on presidential uses of the veto throughout history. By reading and interpreting the table, students will learn that the use of the veto has been increasing since the Civil War and that Congress rarely overturns a veto.

Connection to Textbooks

This lesson complements discussions of checks and balances. It would also supplement discussions of the presidential powers or the steps followed when Congress passes a law.

Objectives

Students are expected to:

1. Describe the key types of information presented in the table on presidential vetoes.
2. Use information in the table on presidential vetoes to draw conclusions about the effectiveness of the veto as a tool of the presidency.
3. Explain why the veto is an illustration of checks and balances.

Suggestions for Teaching the Lesson

Opening the Lesson

- You may wish to introduce the table on presidential vetoes with a lecture explaining the origin of the veto and its role in the system of checks and balances. "Lecture Notes" are provided for this purpose.
  Note: As an alternative you might distribute copies of the "Lecture Notes" to students as a reading assignment prior to study of the table.

Developing the Lesson

- Have students read the brief discussion about the veto power on the first page of the lesson. This serves as an introduction to the table.
- Tell students to examine the table, Presidential Vetoes: 1789-1984.
- **Understanding the Table.** Here are several points you may wish to call to students' attention as they review the table.

1. **Vetoes Before the Civil War (1789-1861).** In the period before the Civil War, the responsibility of maintaining constitutional government was shared by all three branches of the government. Congressmen and Senators more often opposed legislation because they thought it was unconstitutional than Congressmen do today. Thus, many bills which might have been vetoed by the President as unconstitutional never reached his desk. Similarly, Presidents thought they should sign any bill that reached their desk if it was constitutional. Many early Presidents believed that the **only reason** for vetoing a bill was if the bill was **unconstitutional.**

   Jackson's famous veto of the rechartering of the Second Bank of the United States is a good example of a President vetoing a bill because he thought it unconstitutional. Jackson was generally a "strict constructionist." He believed that if something was not in the Constitution, then Congress could not legislate on the issue. In his veto message Jackson explained why he thought the bank bill was not simply bad policy, but that it was unconstitutional. He found nothing in the Constitution about "banks" and so he vetoed the bank bill. Jackson's strong beliefs about the Constitution explain his rather large number of vetoes.

   John Tyler, another strict constructionist, vetoed anything that he thought violated the Constitution. Tyler was also the first "accidental" President. Although a Democrat, Tyler was nominated by the Whigs to run for the vice-presidency in 1840. Ideologically Tyler was still a strict constructionalist Democrat when he succeeded Harrison. Tyler got along poorly with the Whig-dominated Congress. Thus, he vetoed many bills.

   One measure of the constitutional responsibility of both Congress and the President during this period is the fact that in **only two opinions** did the Supreme Court declare acts of Congress unconstitutional between 1789 and 1861. The first time was in *Marbury v. Madison* (1803) when the Court declared that one small section of the Judiciary Act of 1789 was unconstitutional. The second time was in *Dred Scott v. Sandford* (1857) when a divided Court declared that the Missouri Compromise of 1820 was unconstitutional. That decision was a highly political one, however, that reflected the proslavery majority on the Court more than it did the actual law.

   Other than these two decisions, the Supreme Court did not declare any acts of Congress unconstitutional. The greater care in writing legislation that Congress took during this period, as well as presidential reluctance to veto bills if they were constitutional, led to very few vetoes.

2. **Andrew Johnson's Vetoes.** Andrew Johnson vetoed 29 bills, more than double the number of any of his predecessors. The total is more than the first nine presidential vetoes **combined.** Johnson also had fifteen vetoes overridden, which is higher than **any other** President. All these vetoes and veto overrides took place in less than one full term in office. Why?

   Johnson was Lincoln's running mate in 1864. Before that he had been a slaveholding Democratic Senator from Tennessee. But, unlike every other Congressman and Senator from the seceding states, Johnson remained a Unionist. When the rebellion was suppressed in Tennessee, Johnson was appointed military governor of the state by Lincoln.

   When Lincoln ran for reelection in 1864 he dropped Vice-President Hannibal Hamlin (a former Democratic Senator from Maine) and ran with Johnson. This change of running mates was in part designed to show that unity within the nation would be possible. When Lincoln was assassinated in 1865, Johnson became President.

In spite of his pro-Unionist sentiments, Johnson was not in tune with the sentiments of most northerners. For one thing, Johnson opposed granting any rights to former slaves. The new President was biased (even by the standards of the era) and could not accept the thought of blacks voting, holding office, or being treated as equal citizens. Lincoln had advocated that some blacks, especially the nearly 200,000 who served in the Union army, be allowed to vote.

During his term Johnson vetoed a great deal of legislation designed to give former slaves basic human rights, some political rights, and some chances to gain education and employment. Johnson vetoed the Freedman's Bureau Bill (which provided for schools for whites **and** blacks in the South), the 1866 Civil Rights Act, and a host of similar bills. Fifteen of these vetoes were overridden by Congress. These bills, and the veto overrides, were not the work of a small group of "radical" Republicans. Rather, they reflected the will of the vast majority of the Congress and the people of the United States. Johnson's opposition to black rights, his refusal to implement laws passed over his veto, and his political incompetence led to his eventual impeachment in 1868. At his trial, he escaped conviction by one vote.

3. The table presents data for **both** public bills and private bills passed by Congress. Presidents can and do veto both types of bills. (**Private bills** are laws that deal with an individual or one company. These bills aim to solve a problem for one person or company. If passed they apply only to that person or company. **Public bills** deal with matters of general concern and may become public laws.

   Grover Cleveland's Vetoes. Much of the legislation vetoed by Cleveland (304) was private legislation, in particular individual pension and relief bills.

   Decline in Vetoes Since Eisenhower. The number of vetoes has declined drastically since President Eisenhower's Administration. Why? A major reason is that in recent years Congress has passed far fewer private bills because such matters have been increasingly handled through the federal bureaucracy rather than by Congress. Thus, since Eisenhower, Presidents have been vetoing less private legislation because they have been receiving less from Congress. In recent years, almost all legislation being vetoed by the President has been public rather than private legislation.

4. **President Ford's Vetoes.** Ford was a Republican facing a Congress controlled by Democrats. Presidents facing hostile majorities in Congress are more likely to resort to using the veto on major bills than Presidents who find a more friendly group of lawmakers on Capitol Hill.

5. **Parties, Accidental Presidents, and Vetoes.** It is worth noting that the Presidents who were overridden the most times had been Vice-Presidents who gained office through the death (or in Ford's case, resignation) of a President. It is also worth noting that these three Presidents faced Congresses dominated by the opposition party. (Keep in mind that Andrew Johnson was a Democrat, even though he was elected with Lincoln.)

   Being an accidental President does not necessarily lead to vetoes or overrides. Notice that Lyndon Johnson was never overridden, and Chester Arthur was overridden only once. Both Presidents rarely used the veto.

Concluding the Lesson

- Have students answer the questions on the "Veto Power Worksheet."
- Conduct a class discussion about responses to the questions on the student worksheet.

LECTURE NOTES

The Veto Power and Checks and Balances

1. **Origins of the Veto Power**

   The Constitution requires every bill that passes the House and Senate to be sent to the President for action before it can become law.

   The President has the power to **veto** a bill. The President may veto, or not approve, a bill in two ways:

   (1) by sending the bill back to the house of its origin unsigned [the President writes "veto" (I forbid) across the front of the bill] or

   (2) by using a "pocket veto"—not acting on bills submitted within ten days before Congress adjourns.

   Congress may override the President's veto by a two-thirds vote in both the Senate and House. Overriding is very hard to do since only one-third plus one of the members in either house are needed to block an attempt to override a veto.

   The founding fathers described the veto in Article I, Section 7 of the Constitution. During the campaign for ratification some Antifederalists argued strongly against veto power. They said it was a mistake for the executive branch to have any control over the work of the legislative branch.

   Those favoring adoption of the Constitution, the Federalists, supported the veto. Both Alexander Hamilton and James Madison offered two arguments in favor of the veto.

   First, in *The Federalist* (#73), Hamilton argued that the veto was needed to protect the presidency against attempts by Congress to interfere with executive powers.

   Second, Hamilton argued the veto would allow the President to block what he called "improper laws." Madison agreed. During the Constitutional Convention, he said the veto would prevent Congress "from passing laws unwise in their principle, or incorrect in their form" and from violating the rights of citizens.

   Notice that the Federalist arguments all involve the idea of **checks and balances.** This is the principle that each branch of the national government should have some means to check or balance the actions of the other branches.

2. Contribution to Checks and Balances

The veto is an important part of the system of checks and balances.

A. How Presidents Use the Veto

The veto gives the President a role or share in the legislative process in two ways.

First, the President may block or force Congress to modify legislation after the fact. When the President vetoes a bill, and Congress does not have the votes to override the veto, it must modify the bill if it is to become law.

Second, the threat of a veto can be as effective as a veto itself. A President may threaten to veto a bill unless Congress makes changes he wants in the legislation. Here are two examples:

(1) President Nixon once informed Congress that he was displeased with the Senate version of a bill called the Family Assistance Plan. He made it clear he would veto the bill unless Congress passed the House version of the plan. As it turned out, no Family Assistance Plan passed the Senate.

(2) In 1975, both Houses of Congress passed a consumer protection bill. However, the bill never went the final step to a conference committee because President Ford threatened to veto it.

B. How Congress Deals With the Veto

In our system of checks and balances, Congress is not powerless against the veto. Congress may override a veto by a two-thirds vote of both Houses. In addition, Congress has developed two strategies to counteract the veto.

First, Congress often presents the President with bills that cover several different topics in one piece of legislation. This tactic prevents the President from being able to veto only the part he doesn't like, since he has to veto the whole bill or none of it. If he likes most of the bill, he may agree to the part he would otherwise have vetoed.

Second, the Senate or the House may attach amendments (called "riders") to appropriations bills. These bills supply money for the basic federal government activities. Presidents do not like to veto appropriation bills, because the government cannot function without being funded.

In 1959, for example, a rider calling for extending the Civil Rights Commission was attached to a foreign aid bill. During the 1970s, many riders aimed at outlawing school busing or the use of federal funds for abortion were attached to appropriations bills.

Since Presidents must veto an entire bill, not just the parts they do not like, the strategy may cause a dilemma. Either Presidents must veto the entire bill, including the parts they support, or they must veto none of it and let the rider along with the rest of the bill become law.

III-5. THE VETO POWER: A WEAPON IN THE SYSTEM OF CHECKS AND BALANCES

The Constitution says that Congress must send every bill approved by a majority of the House of Representatives and the Senate to the President before it can become law. If the President holds the bill for ten days while Congress remains in session, it becomes law without his signature.

However, Congress and the President often disagree over policy. When Congress passes a bill the President disapproves of, the President may **veto,** or reject, the bill. Article I, Section 7, of the Constitution describes the veto power.

The President may veto a bill in two ways. **First,** the President may send the bill back to the house of its origin unsigned. The President writes "veto" (I forbid) across the front of the bill. A "veto message" may be written to explain this action. **Second,** the President can use a "pocket veto." Presidents may use a "pocket veto" by not acting on bills officially submitted to them less than ten days (not counting Sundays) before Congress adjourns. Presidents sometimes use "pocket vetoes"—when the situation permits—to avoid going on record as opposing particular bills.

Congress may overturn the President's veto by a two-thirds vote of both the House of Representatives and the Senate. Presidents can avoid such embarrassments by using "pocket vetoes" whenever the situation permits.

The table on the next page shows how many times each President has used the veto power since 1789. The table also shows how many vetoes Congress has overridden. Use the information in this table to answer the questions on the student worksheet at the end of the lesson.

TABLE 1

Presidential Vetoes: 1789-1984

	President	Regular Vetoes	Vetoes Over-ridden	Pocket Vetoes	Total Vetoes
1789-1797	George Washington	2	0	0	2
1797-1801	John Adams	0	0	0	0
1801-1809	Thomas Jefferson	0	0	0	0
1809-1817	James Madison	5	0	2	7
1817-1825	James Monroe	1	0	0	1
1825-1829	James Q. Adams	0	0	0	0
1829-1837	Andrew Jackson	5	0	7	12
1837-1841	Martin Van Buren	0	0	1	1
1841-1841	W. H. Harrison	0	0	0	0
1841-1845	John Tyler	6	1	4	10
1845-1849	James K. Polk	2	0	1	3
1849-1850	Zachary Taylor	0	0	0	0
1850-1853	Millard Fillmore	0	0	0	0
1853-1857	Franklin Pierce	9	5	0	9
1857-1861	James Buchanan	4	0	3	7
1861-1865	Abraham Lincoln	2	0	5	7
1865-1869	Andrew Johnson	21	15	8	29
1869-1877	Ulysses S. Grant	45	4	48	93
1877-1881	Rutherford B. Hayes	12	1	1	13
1881-1881	James A. Garfield	0	0	0	0
1881-1885	Chester A. Arthur	4	1	8	12
1885-1889	Grover Cleveland	304	2	110	414
1889-1893	Benjamin Harrison	19	1	25	44
1893-1897	Grover Cleveland	42	5	128	170
1897-1901	William McKinley	6	0	36	42
1901-1909	Theodore Roosevelt	42	1	40	82
1909-1913	William H. Taft	30	1	9	39
1913-1921	Woodrow Wilson	33	6	11	44
1921-1923	Warren G. Harding	5	0	1	6
1923-1929	Calvin Coolidge	20	4	30	50
1929-1933	Herbert Hoover	21	3	16	37
1933-1945	Franklin D. Roosevelt	372	9	263	635
1945-1953	Harry S. Truman	180	12	70	250
1953-1961	Dwight D. Eisenhower	73	2	108	181
1961-1963	John F. Kennedy	12	0	9	21
1963-1969	Lyndon B. Johnson	16	0	14	30
1969-1974	Richard M. Nixon	26	7*	17	43
1974-1977	Gerald R. Ford	48	12	18	66
1977-1981	Jimmy Carter	13	2	18	31
1981-1984	Ronald Reagan	18	4	21	39
	TOTAL	1,398	98	1,032	2,430

*Two "pocket vetoes," overruled in the courts, are counted here as regular vetoes.

SOURCE: *Presidential Vetoes, 1789-1976*, compiled by the Senate Library (Washington, D.C.: Government Printing Office, 1978), ix; Carter and Reagan figures are taken from *Weekly Compilation of Presidential Documents.*

STUDENT WORKSHEET

The Veto Power: A Weapon in the System of Checks and Balances

Directions: Use the information in table 1, page 142, to answer the following questions.

1. How many times since 1789 have Presidents used regular vetoes? ____________________
2. How many "pocket vetoes" have Presidents used since 1789? ____________________
3. Who vetoed the greatest total number of bills?

   ____
4. Who was the first President to use the veto more than 10 times? ____________________
5. Which Presidents did not use the veto power at all?

   ____

   ____

   ____

   ____

   ____

   ____

   ____

   ____
6. List the five Presidents who used the veto (regular and pocket) most often.

   a. ____________________

   b. ____________________

   c. ____________________

   d. ____________________

   e. ____________________
7. a. Which President had the greatest number of vetoes overridden by Congress?

   ____

   b. When Congress overrides a great number of a President's vetoes, what would you expect the political situation to be like?

   ____

   ____

   ____

   ____

   ____

   ____

   ____
8. Have Presidents used their veto power more or less since Franklin Roosevelt's administration?

   ____

   Explain. ____________________

   ____

   ____

   ____
9. What conclusions can you draw from the table about how effectively Presidents can use the veto as a tool to influence Congress?

   ____

   ____

   ____

   ____

III-6. WHAT DOES THE CONSTITUTION SAY ABOUT SEPARATION OF POWERS AND CHECKS AND BALANCES?

LESSON PLAN AND NOTES FOR TEACHERS

Preview of Main Points

The purpose of this lesson is to increase students' knowledge of two related constitutional principles: (1) separation of powers and (2) checks and balances. In addition, students should become more familiar with certain parts of the Constitution that pertain to separation of powers and checks and balances.

Connection to Textbooks

This lesson can be used to reinforce American government and civics textbook treatment of separation of powers and checks and balances. The lesson can be used to supplement American history textbook discussions of main principles of the Constitutional Convention.

Objectives

Students are expected to:

1. Demonstrate knowledge of the constitutional principles of separation of powers and checks and balances by responding correctly with a "YES" or "NO" answer to each item in this lesson.
2. Support their responses to each item by listing the correct reference in the U.S. Constitution (Article and Section).
3. Increase knowledge of certain parts of the Constitution that pertain directly to the principles of separation of powers and checks and balances.
4. Practice skills in locating and comprehending information in the U.S. Constitution.
5. Increase awareness of how the Constitution applies to the concerns of citizens.

Suggestions for Teaching the Lesson

Opening the Lesson

- Inform students of the main points in the lesson.
- Be certain that students understand the directions for the lesson.

Developing the Lesson

- Have students work individually or in small groups to complete the items in this exercise.
- You may wish to have different students report their answers to the items in this lesson. An alternative is to distribute copies of the answers, when appropriate, so that students can check their responses against the correct answers.

Concluding the Lesson

- Ask students to explain what each item in the exercise has to do with either separation of powers or checks and balances. By doing this, students can demonstrate comprehension of the ideas of separation of powers and checks and balances.
- You may wish to have students examine and discuss in more detail issues and questions associated with the items in this exercise.

ANSWER SHEET FOR LESSON III-6

1. NO, Article II, Section 2, Clause 2.
2. NO, Article I, Section 1.
3. NO, Article I, Section 7, Clause 2.
4. NO, Article III, Section 1.
5. YES, Article II, Section 4 (Also: Article I, Section 2, Clause 5).
6. NO, Article III, Section 1.
7. NO, Article III, Section 3.
8. YES, Article I, Section 7, Clause 1.
9. NO, Article II, Section 2, Clause 2.
10. YES, Article I, Section 7, Clause 2.

III-6. WHAT DOES THE CONSTITUTION SAY ABOUT SEPARATION OF POWERS AND CHECKS AND BALANCES?

Read each of the following statements. Decide whether or not each statement describes a situation that agrees with the words of the U.S. Constitution. **Is so,** answer YES. **If not,** answer NO. Circle the correct answer under each statement.

Identify the number of the Article and Section or the Amendment to the Constitution, which supports your answer. Write this information on the line below each item.

CLUE: Answers to these items can be found in Articles I, II, and III.

1. The Chief Justice of the Supreme Court died. Thus, the Senate chose a replacement.

YES NO

____

2. The President passed a new federal law, which was needed, because Congress was not in session.

YES NO

____

3. The Omnibus Crime Bill passed both Houses of Congress. The Bill has been on the President's desk for 15 days while Congress has been in session. Then the President vetoed the bill.

YES NO

____

4. The U.S. Supreme Court announced that it had established, by a unanimous vote of the justices, a new federal appeals court to help with the large load of cases.

YES NO

____

5. Actions of the President that violate the law may lead to impeachment by the House of Representatives.

YES NO

____

6. Congress passed a law, which the President signed, setting age 70 as a mandatory retirement age for justices of the Supreme Court.

YES NO

____

7. It is the duty of the President to declare the punishment for citizens convicted of treason.

YES NO

____

8. Congress has the power to limit the President's use of federal money.

YES No

____

9. The President signed a treaty with the head of an African nation. After approval by two-thirds of the Supreme Court, it went into effect.

YES NO

____

10. Congress may pass a law over the President's veto by a two-thirds vote of both Houses.

YES NO

____

III-7. KEY TERMS FOR UNDERSTANDING SEPARATION OF POWERS AND CHECKS AND BALANCES

LESSON PLAN AND NOTES FOR TEACHERS

Preview of Main Points

The purpose of this lesson is to help students build a basic vocabulary that may help them to understand the Constitution. The key words in this lesson pertain to the constitutional principles of separation of powers and checks and balances. This lesson provides practice in the use of words associated with separation of powers and checks and balances.

Connection to Textbooks

The words in this lesson are related to discussions of separation of powers and checks and balances, which are found in American government and history textbooks. Practice in using these words may help students to read certain parts of their textbook more effectively.

Objectives

Students are expected to:

1. Demonstrate comprehension of key words about separation of powers and checks and balances by supplying the missing words in the list of statements and completing the word-find puzzle on the second page of the lesson.
2. Discuss the key words so as to demonstrate knowledge of the principles of separation of powers and checks and balances.

Suggestions for Teaching the Lesson

Opening the Lesson

- Tell students that the point of this lesson is to provide practice in using key words about two important constitutional principles—separation of powers and checks and balances.
- Remind students of the value of learning key words about aspects of the Constitution. This enables them to communicate better with one another about a topic of importance to every citizen.

Developing the Lesson

- Distribute the worksheets with the list of sentences to be completed and the word-find puzzle.
- Have students work individually or in small groups to complete the worksheets.
- Tell students to write the correct word or phrase on each blank in the list of words on page 147 and to complete the word-find puzzle on page 148.
- Suggest to students that they might want to use the glossary in their textbooks, or other pertinent reference materials, to help them complete the lesson.

Concluding the Lesson

- Check answers by asking students to report their responses to the word-find puzzle.
- Ask students to elaborate upon their responses by explaining, in their own words, the meaning of particular key words of this lesson. Students also might be asked to supply their own examples of certain words or to tell how a particular term may pertain to the concerns of citizens.

ANSWER SHEET FOR LESSON III-7

```
. . . . . . . . . . . . . . . . . . . .
. . . . . . . . . . . . . . . . . . . .
. . . . . . . . . . . . . . . . . . . .
. . C . . . . A . . . . . . . . . . . .
. . H . . . . P . . . . . . . . . V . .
. . E . . . A P . . . . . . . . . E . .
. . C . . . P O . . . . . . . . . T . .
. . K . . . P I . . . . . . . . . O . .
. . A . . . R N . . . . . . . . . . . .
. . N . . . O T . . . . . . . . P I . .
. . D . . . P M . . . . . . . . U M . .
. . B . . . R E C O N S E N T . R P . .
. . A . . . I N . . . E . . . . S E . .
. . L . . . A T . . . P . . . . E A . .
. . A . . . T . . . . A . . . . . C . .
. . N J U D I C I A L R E V I E W H . .
. . C . . . O . . . . A . . . . . M . .
. . E . . . N . . . . T . . . . . E . .
. . . . . . . . . . . E . . . . . N . .
. . . . . . . . . . . D . . . . . T . .
```

III-7. KEY TERMS FOR UNDERSTANDING THE SEPARATION OF POWERS AND CHECKS AND BALANCES

Look at the following sentences. You will find the words needed to complete each sentence in the "word-find" puzzle on page 148. Read each of the sentences below and decide what word or phrase belongs in each of the blanks. Then find the word or phrase in the puzzle and circle it. Write each correct word or phrase in the appropriate blank space within the list of words. Words in the puzzle are displayed horizontally or vertically. None of the words is printed at an angle.

1. Within the national government, the powers necessary to rule are ____________________ among the three branches.
2. Each branch of the government may ____________________ the powers of the other two branches.
3. The President's ____________________ power allows him to control who will serve as judges and who will occupy the main positions in the executive departments.
4. The President's appointments must have the ____________________ of the majority of the Senate.
5. Control over the ____________________ of money to operate the government gives Congress an important weapon to limit the activities of the President.
6. The "Power of the ____________________" is another term to describe Congress' power over the appropriating and spending of money by the government.
7. Congress' lawmaking power may be checked by the President's use of the ____________________ power.
8. Both the President's and Congress' actions may be brought in check by the Court's power of ____________________.
9. The ____________________ power allows Congress to remove from office an unfit President or judge.

"Word-Find" Puzzle About Separation of Powers and Checks and Balances

Z	I	K	I	Q	L	H	W	Y	J	K	M	U	S	G	W	R	E	T	I
T	W	A	R	U	A	D	I	S	T	R	I	B	U	T	I	O	N	E	I
I	C	C	B	A	B	K	U	J	K	W	H	C	V	N	U	S	C	C	D
A	U	C	Y	Y	Q	W	A	P	H	L	O	K	G	S	K	I	O	Y	C
O	K	H	B	I	L	J	P	X	U	Y	H	K	C	Z	Q	N	V	F	V
M	I	E	D	E	Y	A	P	G	F	K	R	E	W	A	B	V	E	W	K
W	I	C	Q	P	V	P	O	V	D	G	A	Q	D	G	E	G	T	J	H
E	R	K	Q	L	A	P	I	G	A	Q	S	V	O	A	M	R	O	O	A
X	U	A	B	B	G	R	N	B	D	X	L	J	P	S	O	M	G	S	C
O	R	N	Z	C	P	O	T	O	P	P	T	H	X	H	D	P	I	S	Q
E	B	D	H	S	V	P	M	I	C	V	R	M	I	E	U	U	M	K	A
T	F	B	G	R	E	R	E	C	O	N	S	E	N	T	U	R	P	P	I
S	R	A	J	C	C	I	N	R	D	E	E	V	A	R	W	S	E	T	W
B	G	L	V	V	G	A	T	A	W	G	P	J	Q	Y	S	E	A	N	U
J	O	A	Z	Q	K	T	W	G	O	Y	A	T	T	Y	J	A	C	E	X
W	K	N	J	U	D	I	C	I	A	L	R	E	V	I	E	W	H	M	Q
R	N	C	A	D	B	O	R	R	V	B	A	K	F	J	V	H	M	X	F
V	E	E	C	E	C	N	R	P	B	L	T	Y	A	X	T	X	E	Z	L
V	A	Z	U	G	S	H	H	X	S	G	E	Z	G	E	G	T	N	K	Y
W	X	U	H	L	F	O	Y	P	C	X	D	P	F	C	Q	Y	T	K	Y

There are 9 words here—can you find them?

1.

2.

3.

4.

5.

6.

7.

8.

9.

III-8. THE PRINCIPLE OF JUDICIAL REVIEW

LESSON PLAN AND NOTES FOR TEACHERS

Preview of Main Points

This lesson defines judicial review—a basic principle of government under the Constitution. The lesson describes the meaning and origins of judicial review, three applications of judicial review, and limitations on the practice imposed by the courts themselves. The lesson underscores the need to have a final interpreter of the Constitution.

Connection to Textbooks

This lesson can be used in connection with government textbook chapters on fundamental constitutional principles and on the Supreme Court. American history textbook chapters on the Federalist period and Jefferson's presidency would provide appropriate opportunities to use the lesson. One might use the lesson in conjunction with history textbook treatments of judicial nationalism under Chief Justice Marshall.

Objectives

Students are expected to:

1. Identify examples of judicial review.
2. Learn the colonial roots of judicial review.
3. Know the significance of *Marbury v. Madison* for the development of judicial review.
4. Know how judicial review of congressional actions increases the courts' role in policy making and increases opportunities for citizen influence of public policy.
5. Understand the contribution of judicial review of state legislation to national unity.
6. Draw inferences about key features of judicial review from relevant statements and tables.

Suggestions for Teaching the Lesson

This is a concept-learning lesson. It is designed according to a "rule-example-application" teaching strategy. A concept—such as judicial review—is presented initially through a definition (a rule) and examples conforming to the rule.

Students then apply the definitions to organize and interpret information. Application exercises follow each main section of the lesson and its conclusion, giving students the chance to test their ability to use the ideas presented in the lesson.

Opening the Lesson

- Inform students of the main points and purposes of the lesson, to focus on the principle of judicial review.
- Have students read the lesson's introductory material. Students might discuss why the imaginary situations are unconstitutional.
  Note: The action described in the first headline violates Article VI which states, "no religious test shall ever be required as a qualification to any office or public trust under the United States."
  The action in the second headline also violates Article VI which establishes the supremacy of national law and the Sixteenth Amendment which established the federal income tax.

Developing the Lesson

- Have students work independently through each of the main sections of the lesson.
- Students should complete the application exercises at the end of each of the first two main sections of the lesson. You might want to discuss student responses to each of the application exercises before having them move to the next section of the lesson. Or you may wish to have them complete all three sets of exercises before discussing them together.

Concluding the Lesson

- Have students read the third and final section of the lesson, "Limitations on Judicial Review." Require them to complete the application exercise at the end of the lesson, which pertains to the entire lesson.
- Conduct a discussion of the application exercise, "Reviewing and Applying Knowledge About the Principles of Judicial Review." Students may need special assistance interpreting and drawing inferences from the tables. The fact that state laws are more often overturned than federal laws might indicate that local laws and lawmakers give less consideration to constitutional issues than members of Congress whose laws affect the whole nation (federal laws). Variation in the numbers of laws overturned over a period of time might suggest differences in the membership of the Court, or pressures it felt from the other branches.
- Ask students to compare the view of Hamilton and Jefferson about judicial review.
- Ask students to verbalize the presumed difficulties of having each branch of government decide what is constitutional, as Jefferson had advocated

Suggested Reading

The case of *Marbury v. Madison* is discussed in detail in a fascinating and easy-to-read chapter in the following book:

Garraty, John A. ed. *Quarrels That Have Shaped the Constitution.* New York: Harper & Row, Publishers, 1964, 1-14.

For teacher background and advanced students:

Bickel, Alexander. *The Least Dangerous Branch.* Indianapolis: Bobbs-Merrill, 1962.

Cox, Archibald. *The Role of the Supreme Court in American Government.* New York: Oxford University Press, 1976.

Suggested Films

The United States Supreme Court: Guardian of the Constitution

The continuing evolution of the Supreme Court is traced through historical highlights and landmark cases and through the insights of several prominent authorities commenting on the jurist's viewpoint and the power of judicial review. Concept Films, 1973, 24 minutes.

Marbury v. Madison

This film dramatizes the Supreme Court decision which established its responsibility to review the constitutionality of acts of Congress. From EQUAL JUSTICE UNDER LAW series, U.S. National Audiovisual Center, 1977, 36 minutes.

III-8. THE PRINCIPLE OF JUDICIAL REVIEW

Imagine these headlines on the front page of your daily newspaper:

THE PRESIDENT PROCLAIMS ONLY CHRISTIANS CAN HOLD JOBS IN THE FEDERAL GOVERNMENT

TEXAS LEGISLATURE PASSES LAW EXEMPTING CITIZENS OF THE STATE FROM PAYING FEDERAL INCOME TAXES

The actions described in the imaginary headlines violate the U.S. Constitution. If challenged in a federal or state court, such actions could be declared unconstitutional through the process of judicial review.

Judicial review is the power of the courts to declare acts of the legislative and executive branches of government null and void if these actions violate provisions of the Constitution. All courts, federal and state, may exercise judicial review. The U.S. Supreme Court, however, can overrule any decision concerning the constitutionality of actions and laws. The Constitution created it as the highest court in the land.

Judicial review is based on these ideas: the Constitution is the supreme law; acts contrary to the Constitution are null and void; the courts are responsible for determining if acts violate the Constitution. Judicial review puts judges in the position to act as the official interpreters of the meaning of the Constitution.

The principle of judicial review is one of the most important of American government. In this lesson you will study:

- The origins of judicial review.
- Three ways to apply judicial review.
- How courts limit their use of judicial review.

The Origins of Judicial Review

The Constitution does not specifically mention judicial review. Where did this practice come from?

Colonial Roots. Before the revolution in 1775 the English Privy Council (advisers to the king) in London regularly reviewed acts of the colonies to make sure they complied with English law. During the Revolution each of the colonies formed state governments. Between 1778 and the Constitutional Convention in 1787, the courts in several states adopted the practice of overturning laws which they found violated their respective constitutions. Thus, legal precedent had established judicial review as a well known practice before the Constitution was written.

When the founders wrote the Constitution, few doubted that they intended the federal courts to have authority to declare state laws unconstitutional. However, the Constitution did not indicate clearly that they intended the Supreme Court to have the same power to review acts of congress or of the President.

A Constitutional Debate Starts. During the debate over ratification of the Constitution, Alexander Hamilton argued that the Constitution implicitly gave the Supreme Court the power of judicial review, even if it did not state that delegation of authority explicitly. In *The Federalist* (#78), Hamilton wrote:

> **The interpretation of the laws is the proper and peculiar province of the courts.** A constitution is, in fact, and must be regarded by the judges as, a fundamental law. It therefore belongs to them to ascertain its meaning as well as the meaning of any particular act proceeding from the legislative body. If there should happen to be irreconcilable variance between the two, that which has the superior obligation and validity ought, of course to be preferred; or, in other words, the Constitution ought to be preferred to the statute, the intention of the people to the intention of their agents.

John Marshall, a young lawyer from Virginia, who supported the Constitution, summarized the need for judicial review.

> To what quarter will you look for protection from an infringement on the Constitution if you will not give the power to the judiciary [the Supreme Court]: There is no other body that can afford [offer] such protection.

Other political leaders of the time did not share Marshall's enthusiasm. As the new government began to operate, Thomas Jefferson emerged as a leader of those who opposed extending the Court's use of judicial review to include supervision of the executive and legislative branches of the national government.

Jefferson wanted each of the three branches of government to interpret the meaning of the Constitution. Thus, Congress would decide for itself whether or not its actions violated the Constitution. Likewise, the President would review the constitutionality of executive actions. Jefferson presented an alternative to the system of judicial review:

> My construction of the Constitution is. . .that each department is truly independent of the others, and has an equal right to decide for itself what is the meaning of the Constitution in the cases submitted to its action most especially where it is to act ultimately and without appeal. . . . Each of the

> three departments has equally the right to decide for itself what is its duty under the Constitution, without any regard to what the others may have decided for themselves under a similar question.

When Jefferson won the presidential election in 1800 the question of whether or not the Supreme Court would exercise judicial review over acts of Congress or of the President remained unresolved. The Court first asserted the power of judicial review of congressional actions in a case stemming from the bitterly contested election which brought Jefferson to office.

Marbury v. Madison (1803). William Marbury was one of the forty-two men awaiting commissions from President Adams' administration appointing them justices of the peace for the District of Columbia. The President, a Federalist, rushed the appointments of these loyal Federalists through the Senate just before his term of office ended. He hoped to leave his successor, the Democratic-Republican Jefferson, with a court system packed with opponents.

Adams' plan faltered when his Secretary of State, John Marshall, failed to deliver all the commissions before Jefferson's inauguration. Discovering Adams' plan, President Jefferson instructed his new Secretary of State, James Madison, not to deliver the remaining commissions, one of which was Marbury's.

In an effort to force Madison to release his commission, William Marbury examined the Judiciary Act of 1789. He found that the act had given the Supreme Court the power to issue *writ of mandamus,* orders forcing public officials to perform their official duties. Armed with this law, Marbury petitioned the Supreme Court, asking the justices to issue a writ to Madison commanding him to deliver the commission.

When Madison refused to obey the *writ of mandamus,* the case came before the Supreme Court.

The Court held that Marbury had a right to the commission he demanded, according to the Judiciary Act of 1789. However, the Court also decided that it had no right, under the Constitution, to issue a *writ of mandamus* forcing Madison to deliver the commission to Marbury.

Chief Justice John Marshall explained the decision, establishing a precedent for judicial review of congressional actions.

Marshall examined Article III, Section 2 of the Constitution to determine what sorts of cases the Supreme Court had original jurisdiction over—cases for which court action would begin at the Supreme Court level. The Supreme Court is primarily an appellate court, empowered to hear appeals from lower courts and has few original jurisdiction powers. Article III did not include issuing *writs of mandamus* within the Court's original jurisdiction. Thus, part of the Judiciary Act violated the Constitution. Applying the principle of judicial review, Marshall wrote:

> Certainly all those who have framed written constitutions contemplate them as forming the fundamental and paramount law of the nation, and consequently the theory of every such government must be, that an act of the legislature, repugnant to the Constitution, is void.

The Supreme Court declared one part of the Judiciary Act of 1789 unconstitutional. Thus, William Marbury failed in his bid to acquire the commission appointing him a justice of the peace. Far more significantly, the Supreme Court had asserted the power of judicial review, establishing a precedent for the development of a main principle of constitutional law in the United States.

In later decisions, federal judges ruling other legislative actions unconstitutional based their right to do so on John Marshall's arguments in *Marbury v. Madison.* Thus, Marshall established a precedent that has become an integral part of constitutional government in the United States.

EXERCISES FOR LESSON III-8

1. Which of the following examples illustrate the operation of judicial review? Mark an "X" in the space next to each correct item. Be prepared to explain your answers.

    ____ a. The Supreme Court rules that a state law is void because it violates free speech as protected in the First Amendment.

    ____ b. The President refuses to sign a bill passed by Congress because he claims it is unconstitutional.

    ____ c. To avoid a hostile Senate, the President fills several ambassadorships without seeking the Senate's approval. Citing Article III, Section 2, the Court declares the appointments invalid in a suit brought by a Senator.

2. Which individual played the most influential role in establishing the principle of judicial review—Thomas Jefferson, John Marshall, George Washington? Explain your choice.

3. Describe in a sentence the significance of the decision in *Marbury v. Madison.*

Three Applications of Judicial Review

Today the Supreme Court exercises its power of judicial review over (1) congressional legislation, (2) presidential actions, and (3) state legislation and state court rulings. This section examines these uses of judicial review.

Review of Congressional Acts. Since *Marbury v. Madison* (1803) the Supreme Court has declared all or part of more than 100 congressional acts unconstitutional (see table 1, page 156). This use of judicial review gives the Court a role in shaping national public policy. For example, in the case of *Califano v. Goldfarb* (1977), the Court ruled that certain provisions of the Social Security Act were unconstitutional because they did not apply equally to men and women. Through its ruling the Court influenced national government policy related to the administering of that law.

Judicial review has also given people another way to participate in national policy making. In many instances a single person may challenge a law passed by Congress, approved by the President and administered by the federal bureaucracy. As one scholar explained, "Through a lawsuit, those who lack the clout to get a bill through the Congress or who cannot influence a federal agency may secure a hearing before the courts."

The Judiciary Committee of the U.S. Senate described the contribution of judicial review to democracy:

> A citizen . . . has the right to demand that Congress shall not pass any act in violation of [the Constitution], and, if Congress does pass such an act, he has the right to seek refuge in the courts and to expect the Supreme Court to strike down the act if it does in fact violate the Constitution. A written constitution would be valueless if it were otherwise.

Review of Presidential Actions. Just as it invalidates certain laws passed by Congress, the Supreme Court invalidates some presidential actions. In the course of fulfilling their duty to enforce the law, Presidents issue executive orders that have the force of law. Citizens and courts can challenge such presidential actions on the grounds that they conflict with existing laws, or with the Constitution.

In 1952, for example, the Court used judicial review to restrain the President during the Korean War. The Court held that President Truman acted unconstitutionally when he ordered federal troops to seize steel mills threatened by closures stemming from labor-management conflicts (*Youngstown Sheet & Tube v. Sawyer*, 1952). The federal government complied with the decision and returned the steel mills to their private owners.

Review of State Actions. The Supreme Court uses its powers of judicial review to regulate various state actions. The court overturns and declares void state and local laws or ordinances that conflict with federal laws or violate the Constitution. Similarly, the justices reverse state court rulings that conflict with the Constitution.

In 1796 the Supreme Court held a state law unconstitutional for the first time (*Ware v. Hylton*). The Supreme Court declared a Virginia law which conflicted with a federal treaty (the 1783 Treaty of Paris between the United States and Britain) invalid. In *Fletcher v. Peck* (1810) the Court decided that a Georgia Law passed in 1795 was unconstitutional because it "impaired the obligation of contracts," thereby violating Article I, Section 10 of the Constitution which forbids states to take such action. Since that time, the Court has invalidated state laws dealing with a wide range of issues.

In *McCulloch v. Maryland* (1819), the justices found Maryland's law that taxed a federally chartered corporation (the national bank) unconstitutional, since the federal law establishing the bank superseded a state law operating to hamper its operation.

In a more recent decision, the Court struck down laws in two states that made performing an abortion a crime. In *Roe v. Wade* (1973) and *Doe v. Bolton* (1973), a majority of justices argued that the right to privacy, springing from the Fourteenth Amendment, extends to a woman's decision to bear a child.

Table 2 (page 156) shows that the Court has been more willing to use its powers of judicial review to overturn state laws than to void national ones. As there are 50 different states, nearly 3,000 counties, and more than 35,000 cities passing laws and ordinances that may conflict with the Constitution, this is hardly surprising.

In addition, judicial review of state and local acts has enabled the national government to maintain its supremacy over the states. Without such a mechanism the national government would find it nearly impossible to enforce the Constitution as supreme law of the land and to maintain national unity. Justice Robert H. Jackson put it this way:

> It is . . . part of our constitutional doctrine that conflicts between state legislation and the federal Constitution are to be resolved by the Supreme Court, and had it not been, it is difficult to see how the Union could have survived.

EXERCISES FOR LESSON III-8

1. Which of the following are examples of judicial review? Mark an "X" in the space next to each correct item. Be prepared to explain your answer.

   ____ a. The Court overturns a Minnesota law raising the voting age to 21 as a violation of the Twenty-sixth Amendment.

   ____ b. The House of Representatives reviews the opinions of a Supreme Court Justice and decides to impeach him.

   ____ c. The Supreme Court declares the President's order for FBI agents to round up critics of his administration unconstitutional.

   ____ d. The Supreme Court decides a case involving a suit between Colorado and Arizona over water rights to the Colorado River.

   ____ e. The Supreme Court rules that sections of the Occupational Health and Safety Act authorizing inspection of workplaces in industry without search warrants violate the Fourth Amendment.

2. One expert has said that the use of judicial review can be compared to "a boxer's big knockout punch." Would you agree? Explain.

Limitations on Judicial Review

The courts play a key role in interpreting the meaning of the Constitution through judicial review. Still, the courts do not use judicial review whenever they wish. Nor can groups or individuals simply file lawsuits anytime they disagree with government actions.

A number of restraints imposed by the Supreme Court limit the Court's use of judicial review. Four restrictions determine the nature of cases which qualify for judicial review: (1) the live controversy rule, (2) the standing to sue doctrine, (3) the doctrine of political questions, and (4) the rules for constitutional interpretation.

Live Controversy Rule. The courts will not consider hypothetical questions about the Constitution. The courts will only hear a case if it involves a real conflict between real adversaries. For example, Congress cannot simply ask the Supreme Court for its advice about whether a bill will be constitutional. The Court would only reach a decision if the bill became law and someone challenged it in a real controversy. This limitation of the Court's jurisdiction complies with Article III of the Constitution, which empowers the Court to hear only "cases and controversies."

Standing to Sue. The requirement of **standing** to sue relates to the need for real controversy. Groups or individuals seeking judicial review must show that a situation adversely affects their legal rights in a personal way. They cannot sue in the general interest of the community. Rather, they must show that the governmental action they want to challenge in court injures them personally.

Thus, someone cannot sue the President or Congress simply becasue he or she does not like a policy or decision. Nor can anyone use the courts solely to promote a particular interpretation of the Constitution.

Political Questions. Even if a person or group proves standing to sue, the Supreme Court may not hear a case if the Court concludes the case involves a political question. Political questions are matters the Supreme Court does not want to decide for a variety of reasons.

Political questions may include problems clearly in the jurisdiction of Congress or the President, questions that defy resolution on legal/constitutional grounds, issues that create intense political controversy, or cases in which decisions would prove difficult to enforce. For example, the Court has ruled that the President, not the Court, should determine whether the United States should recognize a certain foreign government.

Rules for Interpretation. Finally, over the years the Court has developed rules to guide federal judges when they interpret the meaning of the Constitution. Although these "rules" are not binding, judges generally follow them. There are three main guidelines:

(1) The Courts should not rule on a constitutional issue unless such a ruling proves absolutely necessary to settle a case.

(2) When there are two reasonable or possible interpretations of a given law, the courts should choose the interpretation that upholds the law as constitutional.

(3) A court should limit a constitutional ruling as much as possible and strike down only the unconstitutional portion of a law. It should never anticipate or decide issues not immediately before the Court.

In Conclusion

Nearly 200 years after the writing of the Constitution, Hamilton's and Marshall's view of judicial review prevails. Thus, the Supreme Court has used its powers of judicial review to make judgments about laws passed by Congress, presidential actions, and laws passed by state legislatures.

During the last two centuries, the Constitution has remained a vigorous frame of government, as vital as it was when its drafters originally finished it. It owes much of this vitality to the constitutional principle of **judicial review.**

EXERCISES FOR LESSON III-8

Reviewing and Applying Knowledge About Judicial Review

1. Indicate whether each statement below is **true** or **false.** If you mark a statement false, rewrite or correct it so that it is true.

____ a. Only the Supreme Court may exercise judicial review.

____ b. Article III of the Constitution defines judicial review.

____ c. Some state courts used judicial review prior to 1787.

____ d. Thomas Jefferson strongly supported the practice of judicial review.

____ e. The Supreme Court struck down an act of Congress as unconstitutional for the first time in *Marbury v. Madison.*

____ f. Judicial review greatly limits the Supreme Court's role in public policy making.

____ g. According to the live controversy rule, the courts will not review cases involving real conflicts between parties.

____ h. To have standing to sue, a group or individual must apply to the Court within a six-month time limit.

____ i. The Supreme Court will not decide cases it concludes involve political questions.

2. Felix Frankfurter, an Associate Justice of the Supreme Court from 1939-1962, expressed some reservations about judicial review. He referred to the principle as "a deliberate check upon democracy through an organ of government not subject to popular control." Do you think that Frankfurter was right to worry that Supreme Court Justices, who are not elected by voters, might undermine the will of the majority of citizens?

3. Study the tables 1 and 2 (page 156) and answer these questions:

a. Which kind of law has the Court tended to overturn more frequently? ____

b. Did the Court hold more laws unconstitutional before or after 1860? ____

c. Did it hold more laws unconstitutional in the 19th or 20th centuries? ____

d. What does the evidence in tables 1 and 2 suggest about the growth of the Supreme Court's powers within the federal government?

4. Justice Olvier Wendell Holmes served on the Supreme Court from 1902-1932. In 1934, he said:

"I do not think the United States would come to an end if we lost our power to declare an act of Congress void. I do think the Union would be imperiled if we could not make that declaration as to the laws of the several States. For one in my place sees how often local policy prevails with those who are not trained to national views."

a. What is the main idea of Holmes' statement?

b. What does the evidence in tables 1 and 2 suggest about why Holmes made this statement?

c. What do you think Holmes meant in his last sentence when he contrasted "local policy" with "national views?"

d. Do you agree with Holmes? ____________

Why? ____________________

5. Examine Thomas Jefferson's statement on page 150. What is the main idea of Jefferson's statement?

6. How might government under the Constitution differ if Jefferson's view about judicial review had prevailed?

TABLE 1
Provisions of Federal Law Held Unconstitutional by Supreme Court, by Decade (Through End of 1977 Term)

Period	No.	Period	No.
1790-99	0	1890-99	5
1800-09	1	1900-09	9
1810-19	0	1910-19	5
1820-29	0	1920-29	15
1830-39	0	1930-39	13
1840-49	0	1940-49	2
1850-59	1	1950-59	4
1860-69	4	1960-69	18
1870-79	8	1970-79	16
1880-89	4	Total	105

SOURCE: Congressional Research Service, *The Constitution of the United States of America: Analysis and Interpretation* (Washington: Government Printing Office, 1973 and 1978).

TABLE 2
Provisions of State Laws and Local Ordinances Held Unconstitutional by Supreme Court, by Decade (Through End of 1977 Term)

Period	No.	Period	No.
1790-99	0	1890-99	36
1800-09	1	1900-09	38
1810-19	7	1910-19	118
1820-29	8	1920-29	140
1830-39	3	1930-39	91
1840-49	9	1940-49	58
1850-59	7	1950-59	69
1860-69	23	1960-69	140
1870-79	37	1970-79	177
1880-89	45	Total	1007

SOURCE: Congressional Research Service, *The Constitution of the United States: Analysis and Interpretation* (Washington, D.C.: Government Printing Office, 1973 and 1978).

III-9. HOW SHOULD JUDGES USE THEIR POWER?

LESSON PLAN AND NOTES FOR TEACHERS

Preview of Main Points

This lesson introduces students to the concepts of judicial activism and judicial restraint. It has students make a judgment about judicial activism in today's society based on pro and con arguments presented in the lesson.

Connection to Textbooks

Judicial activism can be seen as an outgrowth of the power of judicial review. This lesson strengthens textbook treatments of judicial review by having students make a judgment about a current conflict over judicial power.

Objectives

Students are expected to:

1. Understand the concepts of judicial activism and judicial restraint.
2. Identify examples of judicial activism and judicial restraint.
3. Practice the skill of making judgments about complex social issues.
4. Develop an increased awareness of the significant role the courts play in modern society.

Suggestions for Teaching the Lesson

Opening the Lesson

- Point out that some people today fear that the courts are seizing domination over many areas of American life. This has led to efforts in Congress to curb the power of the federal courts. As a result, there is controversy today over what role courts should play in our society—over how judges should use their power. Explain to students that this lesson will help them understand what the current controversy is all about by giving them a chance to evaluate arguments about judicial activism and make their own judgment.

Developing the Lesson

- Distribute copies of the lesson "How Should Judges Use Their Power?" to students. Have students read the lesson and answer the questions on page 159 and the questions at the end of "Arguments for. . ." and "Arguments Against Judicial Activism."
- After students have studied the lesson they have enough information to make a thoughtful judgment about judicial activism today. Use the questions under "Make a Judgment About Judicial Activism" to guide the students' judgment-making.

Closing the Lesson

- Students may complete the task of making a judgment by working independently or in small groups.
- Conduct a class discussion about alternative judgments of judicial activism.

III-9. HOW SHOULD JUDGES USE THEIR POWER?

Today, federal judges are making decisions affecting areas many people believe should be beyond their jurisdiction. Other people approve of the active role the courts have come to play in our daily lives. Here are some examples of the kinds of decisions judges have been making in recent years:

- An Alabama federal district judge barred state prisons from admitting more inmates until they reduced prison overcrowding. Later the judge ordered sweeping changes in the administration of the prison system. The changes cost $40 million a year.
- A federal judge in Cleveland ordered the city's bankrupt school system to stay open, ignoring state laws that required the schools to close when they ran out of money. The judge reasoned that because school officials had wasted money defending segregation the schools should remain open.
- In Boston, a federal judge ordered the busing of 24,000 students to promote greater integration of blacks and whites. The judge took over administration of one newly integrated high school. He ordered $125,000 in repairs for the school.
- A federal judge ordered Ohio mental health officials to give patients in state hospitals more freedom, privacy, and recreation privileges.

An Active Role for Today's Courts

In recent years the courts have begun tackling problems assumed in the past to be the responsibility of school boards, prison superintendents, hospital administrators, and legislators. Across the nation, far-reaching federal court decisions have reorganized prison systems, opened and closed schools, filled seats on school boards, determined routes for highways, influenced the choice of sites for nuclear power plants, and instructed state and local officials in how to do their jobs.

On what grounds have judges taken such actions? Sometimes a constitutional argument supports such court decisions. For example, judges have ordered changes in prison systems like Alabama's because the courts have found prison conditions so barbaric that they violated the Eighth Amendment's ban on "cruel and unusual punishment." At other times the courts interpret the meaning of laws or design remedies for violations of the law. For example, judges have ordered police departments to hire blacks and other minorities in compliance with federal civil rights laws.

Such decisions have raised questions about how judges use their power to interpret the Constitution. Should judges interpret the Constitution liberally or narrowly?

In this lesson we look at the meaning of judicial activism and judicial restraint. Next we look at arguments for and against judicial activism. Then we let you decide: **how should judges use their power?**

Two Points of View—Activism and Restraint

The Constitution declares in Article VI that the "Constitution, and the Laws of the United States...and all Treaties made...shall be the supreme Law of the land. . . ." This clause, known as the "supremacy clause," spells out the principles that no state law can violate any federal law and that **no law**, state or federal, can violate the Constitution.

As early as 1791 a federal circuit court declared a Rhode Island statute unconstitutional because it violated a provision of the U.S. Constitution. In 1796, in *Ware v. Hylton*, the Supreme Court held a Virginia statute void because it violated the treaty of peace with Great Britain. In *Marbury v. Madison* (1803) the Supreme Court declared a federal law unconstitutional. These cases established the power of "judicial review" in the Supreme Court. **Judicial review** is the power of courts to declare acts of the legislative and executive branches of government null and void if they violate provisions of the Constitution. Since the early nineteenth century debate has continued over **how** federal judges should use their powers. Should the courts practice restraint, or should they expand the scope of the Constitution in their interpretations of laws and constitutional provisions?

Judicial Restraint. Those advocating judicial restraint believe the courts should avoid constitutional questions when possible. The courts should uphold all acts of Congress and state legislatures except for those that clearly violate a specific section of the Constitution.

In practicing judicial restraint, the courts should defer to the constitutional interpretations of Congress, the President, and others whenever possible. The courts should hesitate to use judicial review to promote new ideas or policy preferences. In short, the courts should interpret the law and not intervene in policy making.

Over the years famous Supreme Court justices such as Felix Frankfurter, Louis Brandeis, and Oliver Wendell Holmes called for judicial restraint. Frankfurter once said, "As a member of this Court I am not justified in writing my opinions into the Constitution, no matter how deeply I may cherish them."

Judicial Activism. The principle of judicial activism encourages the courts to actively use judicial review to interpret and enforce the Constitution. Judicial activism envisions the courts playing a role equal to those of the legislative and executive branches in determining the meaning of the Constitution.

According to judicial activism, judges should use their powers to correct injustices, especially when the other branches of government do not act to do so. In short, the courts should play an active role in shaping social policy on such issues as civil rights, protection of individual rights, political unfairness, and public morality.

Chief Justice Earl Warren (1954-1969) and many members of the Warren Court, such as Justice William O. Douglas, followed the principle of judicial activism. For example, they boldly used the Constitution to make sweeping social changes promoting such policies as school desegregation and to insure that all Americans had the opportunity to vote and to participate in American society.

EXERCISES FOR LESSON III-9

1. Justice Charles Evans Hughes said: "We are under a Constitution, but the Constitution is what the judges say it is."

   Would this statement support judicial activism or judicial restraint? Explain.

2. Justice John Harlan said: "The Constitution is not a panacea [cure] for every blot upon the public welfare, nor should this Court, ordained as a judicial body, be thought of as a general haven for reform movement."

   Does this statement support judicial activism or judicial restraint? Explain.

JUDICIAL ACTIVISM—PRO AND CON

The judicial activism of federal courts in recent years has stirred controversies over how much power judges should have. Many people have called for a return to judicial restraint.

What do you think? Should the courts play an active, creative role in interpreting the Constitution? Or is greater judicial restraint needed? Read the following arguments for and against judicial activism.

Arguments For Judicial Activism

Supporters of judicial activism argue that it is necessary to correct injustices and promote needed social changes. They view the courts as institutions of last resort for those in society who lack the political power to influence the other branches of government.

One lawyer explains: "Federal courts are the only avenue of redress for people who can't be heard elsewhere" such as mental patients or the very poor. When a court holds that conditions in a prison or mental hospital are so bad that they are unconstitutional, the legislature and the public are more willing to provide for improvements.

Supporters of judicial activism point out that the courts often step in only after governors and state legislatures have refused to do anything about a problem. Neither state legislatures nor Congress acted to ban racially segregated schools, trains, city buses, parks, restaurants, hotels, movie theaters, amusement parks, and other public facilities for decades. Segregation might still legally exist if the Supreme Court had not declared it unconstitutional in 1954.

Supporters of judicial activism also mention that courts and judges are uniquely qualified to ensure that local officials uphold the guarantees of the Constitution. In fact, with a few exceptions, district court judges have written most of the decisions affecting local institutions. For example, an Alabama judge took over the administration of the prison system in that state because he felt conditions violated the Constitution's prohibition of "cruel and unusual punishment." Similarly, a Texas judge, a man born and raised in the Lone Star State, ordered sweeping changes in the Texas prison sytem. And, a native of Massachusetts and a resident of Boston ordered massive school desegregation in that northern city. In each case, the district judge adopted an "activist" solution to a problem. But, each pursued an activist course because each felt that only such measures would enforce the dictates of the Constitution.

Judicial activists claim they realize the courts cannot solve every social ill. However, they agree with former Justice Arthur Goldberg, who said: "Our country has sustained far greater injury from judicial timidity in [protecting] citizens' fundamental rights than from judicial [action] in protecting them."

In addition, judicial activists point out that the courts do not create policy like legislatures. Judges shape policy inevitably as they interpret the law. And, they argue, interpreting the law **is** the job of the courts.

Chief Justice Earl Warren put it this way:

> When two [people] come into Court, one may say: "an act of Congress means this." The other says it means the opposite. We [the Court] then say it means one of the two or something else in between. In that way we **are** making the law, aren't we?

Finally, judicial activists argue that the framers of the Constitution expected the courts to interpret actively the Constitution to meet new conditions. One federal judge points out, "The Constitution is not an inert, lifeless body of law, but requires reexamination." Activists argue that only the courts can make such reexamination.

EXERCISES FOR LESSON III-9

1. List the three main points in the argument for judicial activism.
2. Which point do you consider the most important? Why?

Arguments Against Judicial Activism

Opponents of judicial activism argue that activist judges make laws, not just interpret them. The issue, they claim, does not center on whether social problems need to be solved, but on whether the courts should involve themselves in such problem solving. By making decisions about how to run prisons or schools the courts assume responsibilities that belong exclusively to the legislative and executive branches of government.

Opponents claim the courts actually rewrite the Constitution in making such policy decisions. They do **not** interpret it. One prominent lawyer argues:

> Some Supreme Court justices employ the ruse [trick] of saying, "What we are doing is interpreting the Constitution," when what the court is doing is deciding what is good for the country.

Critics of judicial activism worry that court decisions that so freely "interpret" the meaning of the Constitution will undermine public confidence in and respect for the courts. One legal scholar says, "At some point, a decision will be rendered where both the Congress and President simply say 'NO'."

In addition, critics point out that federal judges are not elected; they are appointed for life terms. As a result, when judges begin making policy decisions about social or political changes society should make, they become "unelected legislators." Consequently, the people lose control of the the right to govern themselves.

Further, unlike legislatures, courts are not supposed to be open to influence from interest groups. Thus, the courts may not hear different points of view on complex social issues. By contrast, in legislatures, elected officials are responsive to such interests.

Finally, opponents of judicial activism argue that judges lack special expertise in handling such complex tasks as running prisons, administering schools, or determining hiring policies for businesses. Judges are experts in the law, not in managing our social institutions. One legal scholar put it this way: "For the most part judges are narrow-minded lawyers with little background for making social judgments."

EXERCISE FOR LESSON III-9

1. List the three main points in the argument against judicial activism.
2. Which point do you think is most important? Why?

Make a Judgment About Judicial Activism

You have read arguments for and against judicial activism. What do you think? Answer the following questions about judicial activism.

1. What are some possible bad consequences of judicial activism?
2. What are some possible good consequences of judicial activism?
3. How might judicial activism affect you?
4. How might judicial activism affect others in our society?
5. Is judicial activism a good idea? Should judges follow a policy of judicial activism?

III-10. KEY TERMS FOR UNDERSTANDING THE JUDICIAL SYSTEM

LESSON PLAN AND NOTES FOR TEACHERS

Preview of Main Points

The purpose of this lesson is to help students build a basic vocabulary that may help them understand the Constitution. The key words in this lesson pertain to the judicial system, which serves to interpret the Constitution. This lesson provides practice in the use of words associated with the judicial system.

Connection to Textbooks

The words in this lesson are related to chapters about the courts and judges, which appear in every American government textbook. The words also are related to discussions of the judicial branch of government, which are presented at the end of American history textbook chapters on the Constitutional Convention. In addition, the terms are relevant to history textbook discussions of the Judiciary Act of 1789 and various Supreme Court cases that appear throughout these textbooks. By using the words in this lesson, students may become more effective readers of certain parts of their textbook.

Objectives

Students are expected to:

1. Demonstrate comprehension of key words about the judicial system by supplying the missing words in the lists of statements and using the key words to complete the crossword puzzle on page 163 of the lesson.
2. Discuss the key words so as to demonstrate kmowledge of the judicial system and its relationship to the Constitution.

Suggestions for Teaching the Lesson

Opening the Lesson

- Tell students the main point of this lesson, which is to provide practice in using key words about the judicial system—an important aspect of government under the Constitution.
- Remind students of the value of learning key words about aspects of constitutional government. This enables them to communicate better with one another about the topic of importance to every citizen.

Developing the Lesson

- Distribute the worksheets with the sentences to be completed and the crossword puzzles.
- Have students work individually or in small groups to complete the worksheets.
- Tell students to write the correct word or phrase on each blank in the two lists of incomplete sentences on page 162 and to complete the crossword puzzle on page 163.
- Suggest to students that they might want to use the glossary in their textbook, or other pertinent reference material, to help them complete this lesson.

Concluding the Lesson

- Check answers by asking students to report their responses to the crossword puzzle.
- Ask students to elaborate upon their responses by explaining, in their own words, the meaning of particular key words of this lesson. Students might also be asked to tell how a particular term may pertain to the concerns of citizens.

Answers to Crossword Puzzle

Across	Down
2. certiorari	1. obiter dictum
4. stare decisis	3. district
9. Supreme	5. appeal
11. writ	6. dissenting
12. Justice	7. opinion
13. amicus curiae	8. concurring
	10. original

III-10. KEY TERMS FOR UNDERSTANDING THE JUDICIAL SYSTEM

Read each of the sentences in the following two lists, which are labeled "Across" and "Down." **What word or words should be placed in each of the blanks?** Write the correct word or words in the appropriate spaces on the crossword puzzle on page 163.

Across

2. The Supreme Court, by issuing an order of ______________________ will command a lower court to send it the records of a case for review.

4. "Let the decision stand," or ______________ ______________________, is a rule which means that a court's decision will serve as a guide for decisions in future, similar cases.

9. At the top of the federal judicial system is the ______________________ Court of the United States.

11. A court's order to a public official to do what someone has a legal right to expect will be done is called a ______________ of mandamus.

12. A member of the United States Supreme Court is called a ______________________ .

13. In some cases, an ______________________, or "friend of the court," will be allowed to help one of the sides present its arguments before the Supreme Court.

Down

1. An ______________________ is a statement in a court opinion not related to the main issue of the case. It may, though, provide an insight to future court decisions.

3. The ______________________ courts are at the bottom level of the federal court system.

5. The highest court often hears cases brought to it by ______________________ from a lower court.

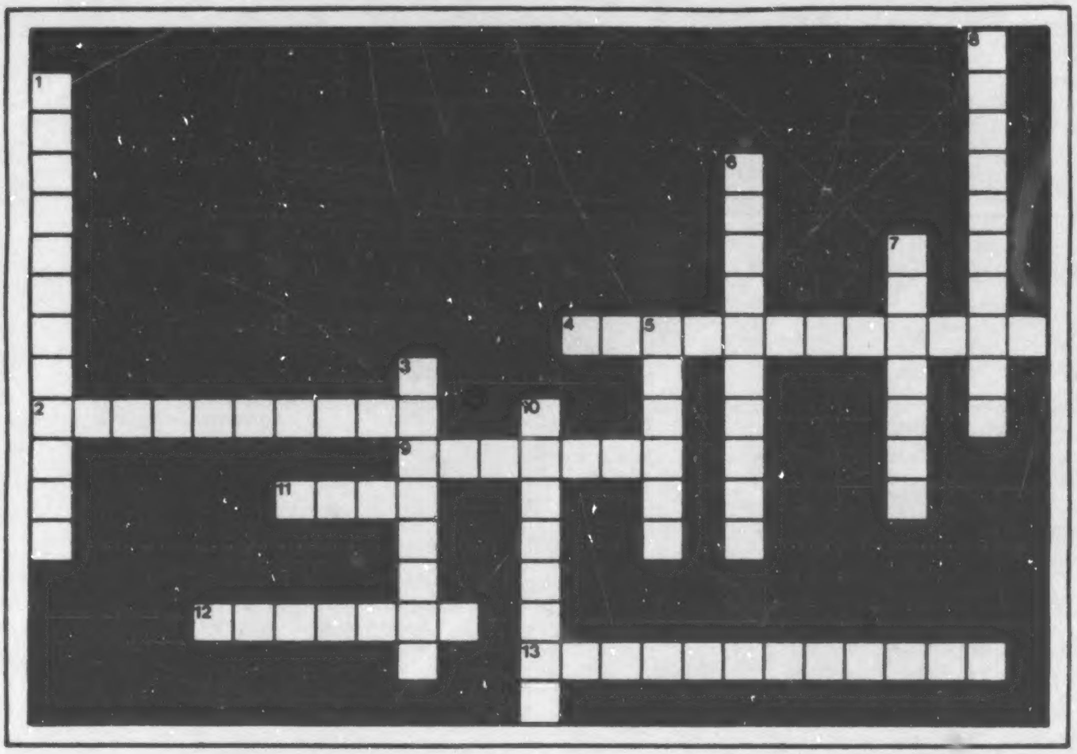
6. A ______________________ opinion may be presented by a member of the Supreme Court, who judges the case differently from the Court's majority.

7. The decision and explanantion for the decision by the Supreme Court is called an ______________ .

8. A Supreme Court member may agree with the majority's decision in a case, but not its explanation. If so, the member may present a __________ ______________________ opinion.

10. When a court hears cases for the first time, it is the court of ______________________ jurisdiction.

The Judicial System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III-11. CONSTITUTIONAL RIGHTS AND LIBERTIES

LESSON PLAN AND NOTES FOR TEACHERS

Preview of Main Points

This lesson is about constitutional rights and liberties in the United States. It draws attention to rights and liberties that are set forth in the U.S. Constitution. Furthermore, questions are raised about the various meanings of these rights and liberties in particular cases and about limitations on these rights and freedoms.

Connection to Textbooks

This lesson can be used with government and civics textbook chapters on civil liberties and rights.

Objectives

Students are expected to:

1. Speculate about the constitutional rights and liberties of people in the United States in response to a series of examples in a quiz.
2. Speculatively discuss issues about constitutional rights and liberties that are raised by discussion of a series of examples in a quiz.
3. Identify the parts of the U.S. Constitution that set forth civil liberties and rights.
4. Identify examples of civil liberties and rights guaranteed by the U.S. Constitution.
5. Distinguish examples of civil rights and liberties that are set forth rather clearly and exactly in the Constitution from those that have raised issues requiring interpretation by the Supreme Court.

Suggestions for Teaching the Lesson

The first part of this lesson, which involves the 15-item quiz, can be used as a "springboard" to textbook discussions of civil liberties and rights. The items in this quiz should serve to focus attention on and arouse curiosity about the civil liberties and rights of Americans. Discussion of these items can set the stage for the systematic study of constitutional rights and liberties in a textbook. The second part of this lesson, which involves a description of rights and liberties in the U.S. Constitution, can also be used as a follow-up to discussion of the introductory quiz.

Opening the Lesson

- Ask students the meaning of constitutional rights and liberties. Ask them for examples of their legal rights and freedoms. Ask them why it is important to know about their rights and liberties.
- Have students read the first page of the lesson, which challenges them to demonstrate their knowledge of constitutional rights and liberties by taking a quiz, which appears on the next page of the lesson. Reinforce this challenge. However, inform students that they will not receive a grade for their performance on the quiz. Rather, the purpose is to initiate discussion of the rights and liberties that they have under the Constitution.

Developing the Lesson

- Distribute copies of "A Quiz About Constitutional Rights and Liberties" to students. Make certain that everyone understands the directions. Then have students take the quiz. Don't permit students to see the "Answer Sheet" for this quiz, which can be found at the end of the lesson.

- Discuss student responses to each item on the quiz. Ask them to explain why they responded "YES" or "NO" to each item. Encourage a "free wheeling" and speculative discussion. Do not provide answers at this point in the lesson. Rather, encourage students to raise issues and questions and to explore alternative answers in the discussion. Don't show the "Answer Sheet" for the quiz to students. This should be done at the conclusion of the lesson.

- Tell students they will have an opportunity to study information that pertains to the quiz. They can check their answers against what they learn from this reading assignment.

- Have students read the description of "Civil Liberties and Rights in the Constitution" that constitutes the remainder of the lesson.

- Have students answer the questions at the end of the lesson, which involve review of the knowledge included in the preceding section of the lesson. Discuss these questions with them.

Concluding the Lesson

- Challenge students to take the quiz again. Perhaps they will change some of their answers in the light of knowledge gained from their work with this lesson.

- Distribute a copy of the "Answers to the Quiz About Constitutional Rights and Liberties." This answer sheet can be found at the end of the lesson. Review these answers with students. Point out that some items are rather clear examples of rights or liberties that are set forth in the Constitution. In contrast, other items are examples of constitutional issues that have been interpreted by the Supreme Court in particular cases. Emphasize that continuing issues have been raised about limitations on the exercise of rights and liberties. For example, at what point does the freedom of one person interfere with the freedom or rights of another person? When does the exercise of freedom by a person endanger public order or the security of the nation? These questions often are difficult to answer. They are dealt with by judges in courts of law who must interpret the Constitution as it applies to particular cases.
- Invite students to raise questions about any of the items on the answer sheet.

Suggested Reading

Brant, Irving. *The Bill of Rights: Its Origins and Meaning.* Indianapolis: Bobs-Merrill Company, 1965.

Cohen, William, Murray Schwartz, and DeAnne Sobul. *The Bill of Rights: A Source Book.* Beverly Hills, California: Benziger, 1976.

Pleasants, Samuel. *The Bill of Rights.* Columbus, Ohio: Charles E. Merrill Books, Inc., 1966.

Suggested Films

Interrogation and Counsel

The Fifth and Sixth Amendments are introduced in dramatic situations involving an accused person's privilege against self-incrimination and his right to legal counsel. From *The Bill of Rights* series, Churchill Films, 1967, 21 minutes.

Freedom to Speak: The People of New York v. Irving Feiner

This film combines reenactments with interviews of participants in the case of a college student whose conviction for incitement to riot was upheld by the U.S. Supreme Court. It shows how constitutional interpretations vary with time and changes in public opinion and raises the issues of freedom vs. security, liberty vs. law, right vs. responsibility, and liberty vs. license. From *Our Living Bill of Rights* series, Encyclopedia Britannica Educational Corp., 1967, 23 minutes.

The Story of a Trial

Using a case involving two young men accused of a misdemeanor, the film provides an introduction to procedures that protect citizens' rights and the constitutional safeguards of the accused. From *Bill of Rights in Action* series, BFA Educational Media, 1976, 21 minutes.

Freedom of Religion

The Bill of Rights guarantees freedom of religion, but what if laws are broken or life is endangered in the exercise of that freedom? The film uses a blood transfusion case to discuss constitutional issues and analyze when society's interest outweighs an individual's constitutional right to freedom of religion. From *Bill of Rights in Action* series, BFA Educational Media, 1969, 21 minutes.

Freedom of Speech

The film uses the case of a controversial speaker convicted for disturbing the peace to stress the importance and complexity of the issues involved in free speech. The lawyers argue the constitutional issues in an appeals court. From *Bill of Rights in Action* series, BFA Educational Media, 1968, 21 minutes.

Freedom of the Press

A reporter refuses to cooperate in a criminal investigation, protecting the source of his new story. The film questions the meaning of the First Amendment's prohibition against laws that abridge freedom of the press. From *Bill of Rights in Action* series, BFA Educational Media, 1973, 21 minutes.

Due Process of Law

A college student is suspended following a rock-throwing incident during a campus demonstration. The film presents opposing interpretations of the due process clause of the Fifth amendment, and suggests that due process is time-consuming and often in conflict with the immediate need to avoid further violence. The result of the student's application for reinstatement is left open-ended. From *Bill of Rights in Action* series, BFA Educational Media, 1971, 23 minutes.

Equal Opportunity

Two factory workers of different races compete for the same promotion. The film reviews the constitutional issues involved in establishing equal employment opportunity and deals with seniority, union contracts, qualifications of competing employees, and differing interpretations of "discrimination." The film is open-ended. From the *Bill of Rights in Action* series, BFA Educational Media, 1969, 22 minutes.

III-11. CONSTITUTIONAL RIGHTS AND LIBERTIES

Americans often boast of their legal rights and freedoms. Citizens of the United States refer to themselves as "free people" and to their nation as a "free country." The legal rights and freedoms of Americans depend on the traditions of Anglo-American law, the Declaration of Independence, the Constitution, many Supreme Court decisions, and perhaps most importantly of all, a spirit of liberty that has developed over the course of American history.

The Constitution says that neither the government nor individuals may take away certain rights of people. The Constitution helps ensure that those in the minority will enjoy certain rights and privileges, irrespective of the opinions and intentions of the national majority. Thus, people may freely practice any religion they want. Similarly, people possess the rights of freedom of speech and press even if the majority dislikes their ideas.

The Constitution, however, does not permit people to do anything they want to do. The liberties and rights of people are not unlimited.

What liberties and rights of the people does the constitution of the United States guarantee? What limits the use of these rights and liberties. Test your knowledge of constitutional rights and liberties by responding to the quiz which begins on this page.

A Quiz About Constitutional Rights and Liberties

How much do you know about the constitutional rights and liberties of individuals in the United States? Show your knowledge by responding either "YES" or "NO" to the 15 items in column I. Mark an "X" in the appropriate space in column II to record your response to each item in column I. Be prepared to explain your responses.

I	II	
Examples	**YES**	**NO**
1. Some people claim that the President has the constitutional right to arrest and detain indefinitely members of certain political parties who are considered dangerous to the interests of the President. Do you agree?	_____	_____
2. A convicted murderer was sentenced to die in the electric chair. However, when the executioner threw the switch, the chair did not work. The prisoner was taken back to prison and sentenced to die six days later. He claimed that placing him in the electric chair a second time would violate his constitutional rights. Do you agree?	_____	_____
3. Do people have the constitutional right to organize peaceful demonstrations to complain about decisions of government officials?	_____	_____
4. May Congress pass a law that requires a person to be a Christian to be eligible for appointment to a job in the executive branch of the federal government?	_____	_____
5. May authorities throw someone who seems to be a threat to security in jail and keep him there indefinitely, even though they have no evidence that the person has broken a law?	_____	_____
6. May Congress pass a law that requires a certain person to pay a fine, because a majority in Congress believes that the person has violated a law, even though he has never been convicted of a crime.	_____	_____

	YES	NO
7. An unpopular group, which preaches violence and race hatred, has asked for a permit to have a parade in your city. Quite possibly, this parade would lead to violence, because many people in the town bitterly oppose this group. The city has denied a parade permit on the grounds that such a parade will cause violence. Did the city government decision violate the constitutional rights of this group?	____	____
8. May a state legislature pass a law requiring people to pay a tax in order to register to vote in public elections?	____	____
9. John Jones committed a certain crime and, according to the law, received a light punishment. Members of Congress believed that Jones' punishment should be more severe, so they influenced a majority in Congress to pass a law making the penalty for this crime more severe. Jones had committed the crime before the passage of the new law. Nevertheless, he received the new, more severe punishment. He complained that the new sentence violated his constitutional rights. Do you agree with Jones?	____	____
10. Children who belonged to an unpopular religion sold their church's magazines on the streets. The police stopped them because they were violating a state law forbidding children under age 12 to sell periodicals of any kind on the street. Leaders of the church said the police had violated their constitutional right to religious freedom. Do you agree?	____	____
11. Leaders of an unpopular religious sect asked government officials for a permit to hold a meeting in a public park. The officials refused the request. Nevertheless the sect held a meeting in the park. The leaders were arrested. They complained that the government had violated their constitutional rights. Do you agree?	____	____
12. Police arrested a person for using a "sound truck" (with a loudspeaker) to spread political ideas. However, people complained that he was disturbing them. Was this person's right to free speech violated?	____	____
13. A person was charged with robbery and tried by a six-person jury in a state court. This jury found him guilty and sentenced him to prison for life. The convicted person argued that the trial proceedings had violated his constitutional rights, because the jury was made up of six, not twelve, members. Do you agree?	____	____
15. Police officers came to the home of a man with a warrant for his arrest. They did not have a search warrant. Nonetheless, they forced their way into his house and searched it. They found evidence which the prosecution used at the man's trial to convict him. The convicted man claimed that the policemen violated his constitutional rights when they searched his home and took things from it without a warrant. Do you agree?	____	____

Civil Liberties and Rights in the Constitution

We define **civil liberties** as freedoms spelled out in a constitution. They guarantee people and property legal protection against arbitrary interference by the government. Civil liberties restrain the government from abusing individuals in certain ways.

Civil rights derive from the legal power and duty of the government to protect individuals against certain abuses by other individuals or government officials. The terms civil liberties and civil rights often are used to mean the same thing.

Civil rights and liberties involve legal limits on the power of government. In addition, the government protects some of the civil rights of its citizens. For example, Article 1, Section 9, of the U.S. Constitution says that Congress shall not have the power to suspend "the privilege of the writ of habeas corpus. . .unless when in cases of rebellion or invasion the public safety may require it." A *writ* is an order in writing, from a court of law, which requires the performance of a specific act. A *writ of habeas corpus* requires officials to bring a person whom they have arrested and held in custody before a judge in a court of law. The officials who are holding the prisoner must convince the judge that there are lawful reasons for holding him or her. If the judge finds their reasons for holding the prisoner unlawful, then the court frees the suspect. The *writ of habeas corpus* is a great guarantee protecting individuals against government officials who might want to jail them only because they belong to unpopular groups or express criticisms of the government.

Article 1, Section 9, also says that "No bill of attainder or *ex post facto* law shall be passed."

A *bill of attainder* is a law that punishes a person without permitting him a trial or fair hearing in a court of law. If the Constitution permitted bills of attainder, government officials could, by law, force the person attained or punished by legislative act to forfeit his or her liberty, property, or income. Using a bill of attainder, government officials could punish an individual who criticizes them or who belongs to an unpopular group. The U.S. Constitution protects individual rights and freedoms by denying to the government the power to pass a bill of attainder.

An *ex post facto* law makes an act a crime that was not a crime when committed, or increases the penalty for a crime after it was committed, or changes the rules of evidence to make it easier to convict someone. The Constitution protects individuals by denying to the government the power to punish them through the passing of *ex post facto* laws.

The main body of the Constitution includes another legal right or freedom in Article 6: "No religious test shall ever be required as a qualification to any office or public trust under the United States." Thus, a person can hold a public office even if he or she holds unpopular religious beliefs or expresses no interest in religion. Article 6, Clause 3, of the Constitution protects individuals by denying to the government the power to prevent people from serving in the government for expressing certain religious beliefs.

What civil liberties or rights do Article 1, Section 9, and Article 6, Clause 3, of the Constitution guarantee?

Several amendments to the Constitution pertain to civil liberties and rights. Amendments I-X, the Bill of Rights, list the rights the national government may not take away from an individual. The **First Amendment,** for example, says that Congress cannot pass any law violating an individual's freedom of speech, freedom of the press, freedom to assemble peacefully, and freedom to petition the government.

Amendment II guarantees the states' right to maintain local militias. At the time of the writing of the Constitution many people feared the national government might become a dictatorship at some point in the future. Some people worried that a future President, as the constitutionally appointed Commander-in-Chief of the Army and Navy, might use the military to take over the government. To protect against a military tyranny, the Bill of Rights guaranteed that the states could form their own armies, the state militias.

Amendment III forbids the government to house soldiers in private dwellings without the consent of the owner in time of peace.

Amendment IV protects individuals against unreasonable searches and seizures of their property. It establishes conditions for the lawful issuing and use of search warrants by government officials.

What do Amendments I-IV say about the fundamental rights and liberties of individuals?

AMENDMENT I

> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

AMENDMENT II

A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.

AMENDMENT III

No Soldier shall, in time of peace be quartered in any house, without the consent of the Owner, nor in time of war, but in a manner to be prescribed by law.

AMENDMENT IV

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Amendments V-VIII discuss the legal procedural rights of individuals. They describe procedural rights and privileges that the national government must grant individuals in processing civil and criminal cases. For example, the **Fifth Amendment** protects an individual from these actions: (1) being held to answer for a serious crime unless the prosecution presents appropriate evidence to a grand jury that indicates the likely guilt of the individual; (2) being tried more than once for the same offense; (3) being forced to act as a witness against oneself in a criminal case; (4) being deprived of life, liberty, or property without due process of law (fair and proper legal procedures); and (5) being deprived of property without fair compensation.

The **Sixth Amendment** guarantees persons accused of a crime several rights. It assures them: (1) a speedy, public trial before an impartial (unbiased) jury of the state and community in which the crime was committed; (2) information about what they have been accused of and why; (3) a meeting with hostile witnesses; (4) means of obtaining favorable witnesses; and (5) help of a lawyer.

The **Seventh Amendment** guarantees the right of a trial by jury in civil cases where the value of the item(s) or the demanded settlement involved in the controversy exceeds twenty dollars.

The **Eighth Amendment** protects individuals against both cruel and unusual punishment and the establishment of excessive bail.

What is said in Amendments V-VIII about legal procedures that must be followed in civil and criminal cases? What rights are guaranteed to individuals accused of crimes?

AMENDMENT V

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

AMENDMENT VI

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation: to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense.

AMENDMENT VII

In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise reexamined in any Court of the United States, than according to the rules of the common law.

AMENDMENT VIII

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

Amendments IX and X pertain to retention of rights not specifically mentioned in the Constitution. For example, **Amendment IX** says that the rights guaranteed in the Constitution are not the **only** rights that individuals may have. This amendment should not be interpreted as denying or taking away other rights or liberties, which are retained by the people.

Amendment X says that the states and the people retain the powers the Constitution does not grant to the United States government or prohibit to the states.

What do Amendments IX and X say about the retention of rights by the people and the states?

AMENDMENT IX

> The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

AMENDMENT X

> The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

Six amendments passed since the 1791 ratification of the Bill of Rights also pertain to civil liberties or rights. These include Amendments XIII, XIV, XV, XIX, XXIV, and XXVI.

Passed after the Civil War, Amendments XIII, XIV, and XV helped protect the rights and define the legal position of those who had been slaves. The **Thirteenth Amendment** abolished slavery and the **Fifteenth Amendment** barred the states from denying any citizen the right to vote on the basis of race, color, or previous condition of being a slave.

The **Fourteenth Amendment** defined citizenship so that no state could deny former slaves the rights and privileges of citizenship. Section 1 of Amendment XIV pertains to civil liberties and rights. The Supreme Court has interpreted it as limiting the power of state governments to interfere with basic liberties and legal procedural rights of individuals. Amendments I and V, for example, prohibited the national government from taking certain liberties and legal procedural rights away from individuals. However, these amendments did not limit the power of state governments. Since the 1920s, the Supreme Court has interpreted the "due process" clause of the Fourteenth Amendment to require state governments to comply with many protections of the Bill of Rights. In 1925, the Court ruled that the "due process" clause forbade state governments to interfere with citizens' First Amendment rights to free speech. The phrase "due process of law" refers to all the proper legal steps the Constitution and the courts guarantee. It serves to assure people of fair treatment under the law.

What do Amendments XIII, XIV, and XV say about the basic freedoms and legal procedural rights of individuals?

AMENDMENT XIII

> Section 1. Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.
>
> Section 2. Congress shall have power to enforce this article by appropriate legislation.

AMENDMENT XIV

> Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to the person within its jurisdiction the equal protection of the laws.

AMENDMENT XV

> Section 1. The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude.
>
> Section 2. The Congress shall have power to enforce this article by appropriate legislation.

Amendments XIX, XXIV, and XXVI extended and protected the voting rights of certain individuals. **Amendment XIX** extended suffrage to women. **Amendment XXIV** prohibited states from requiring people to pay a tax to qualify to vote, thereby extending the right to vote to people who could not afford to pay a poll tax. **Amendment XXVI** lowered the minimum voting age to eighteen.

What do Amendments XIX, XXIV, and XXVI say about the civil rights of individuals?

AMENDMENT XIX

> The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of sex.
>
> Congress shall have the power, by appropriate legislation, to enforce this article.

AMENDMENT XXIV

Section 1. The right of citizens of the United States to vote in any primary or other election for President or Vice-President, for electors for President or Vice-President, or for Senator or Representative in Congress, shall not be denied or abridged by the United States or any State by reason of failure to pay any poll tax or other tax.

Section 2. The Congress shall have power to enforce this article by appropriate legislation.

AMENDMENT XXVI

Section 1. The right of citizens of the United States who are eighteen years of age or older, to vote shall not be denied or abridged by the United States or by any State on account of age.

Section 2. The Congress shall have power to enforce this article by appropriate legislation.

EXERCISES FOR LESSON III-11

As desribed above, certain civil liberties and rights are included in the U.S. Constitution. In some cases, the meaning and application of these liberties and rights are clear. In these cases, it is rather easy to decide whether or not an individual's rights have been violated. For example, during ordinary times, an individual in custody has an unqualified right to obtain a writ of habeas corpus. But the Constitution says that this right may be suspended under certain conditions, such as rebellion or invasion. The Supreme Court may be involved in deciding exactly when this right may or may not be suspended. It is the job of the Supreme Court to interpret the meaning of civil liberties and rights in cases where their application is not clear. The statements of the Constitution provide a legal framework to guide decisions about civil liberties and rights.

Reviewing Knowledge About Constitutional Rights and Liberties

1. Match the right or liberty in Column I with the place in the U.S. Constitution which defines or refers to it (Column II).

	Column I	Column II
___	1. writ of habeas corpus	A. Article I
___	2. freedom of speech	B. Article II
___	3. right to trial by jury	C. Article III
___	4. no *ex post facto* laws	D. Article VI
___	5. no bills of attainder	E. Amendment I
___	6. freedom of religion	F. Amendment II
___	7. right to due process (fair and equal treatment under the law)	G. Amendment IV
___	8. no religious test as qualification for holding public office	H. Amendment V
___	9. right of women to vote in public elections	I. Amendment VI
		J. Amendment XIX
		K. Amendment XXIV

2. Define these terms. Give an example that fits each of your definitions. Explain how each term relates to constitutional rights and liberties.

   a. *ex post facto* law

   b. bill of attainder

   c. writ of habeas corpus

   d. religious test to qualify for public office

   e. due process

   f. unreasonable search and seizure

   g. First Amendment freedoms

3. Which parts of the Constitution deal with legal procedural rights of individuals? (List the correct articles or amendments.)

4. Which amendments deal with guarantees of basic freedoms of individuals? What are these freedoms?

5. List and provide examples of at least three limitations on the constitutional rights and liberties of people in the United States.

6. In your opinion, which constitutional rights or liberties are the most important. Identify and rank the five most important rights or liberties. Be prepared to explain your selection and ranking of these items.

ANSWERS TO THE QUIZ ABOUT CONSTITUTIONAL RIGHTS AND LIBERTIES

1. NO. Article I, Section 9, of the U.S. Constitution states that individuals have "the privilege of the writ of habeas corpus" which prevents a government official from arresting and holding individuals indefinitely without lawful reasons. Furthermore, Amendment I guarantees the right of individuals to belong to a political party that opposes the President.

2. NO. The U.S. Supreme Court decided that this chain of events had not violated the prisoner's constitutional rights. He had been convicted in compliance with the legal procedures set forth in Amendment V of the U.S. Constitution. See the case of *Louisiana ex. rel. Francis v. Resweber* (1947).

3. YES. The First Amendment guarantees this right.

4. NO. According to Article VI of the U.S. Constitution, "No religious test shall ever be required as a qualification to any office or public trust under the United States." A person has the constitutional right to eligibility for a position in the government regardless of his or her religious beliefs, or lack of them.

5. NO. The privilege of the writ of habeas corpus (Article I, Section 9) protects an individual against arbitrary arrest and detention.

6. NO. Article I, Section 9, denies to Congress the power to pass a "bill of attainder." A bill of attainder law would punish an individual without a trial in a court of law. This section denies Congress the power to take away the legal rights of individuals to defend themselves in a court of law against criminal charges and/or official punishments.

7. NO. The courts have consistently upheld the right of unpopular groups to hold rallies, marches, and meetings, as long as they are nonviolent. Furthermore, the courts have held that the government (local, state, or federal) must give protection to unpopular speakers. Otherwise mobs could prevent people from exercising their constitutional rights. If an unpopular group petitions to hold a public meeting, the police must protect that group from the violence of the mob. Thus, in recent cases the Ku Klux Klan has been allowed to march in Austin, Texas, and the American Nazi Party has held marches in a number of cities, even though both groups often stimulate violent reactions from otherwise peaceful citizens.

8. NO. The Twenty-fourth Amendment to the U.S. Constitution bans payment of poll taxes as a condition for voting in elections for national offices. People who cannot or will not pay such a tax have the right to vote. The Supreme Court found poll taxes in state elections unconstitutional in 1966 because they violate the equal protection clause of the Fourteenth Amendment.

9. YES. Article I, Section 9, of the U.S. Constitution denies Congress the power to pass an *ex post facto* law. The legal system can only judge and punish a person for breaking laws in effect at the time he or she committed any given act.

10. NO. A state government may pass and enforce laws to protect children. This kind of action does not necessarily violate the constitutional right of freedom of religion, which Amendment I guarantees. See *Prince v. Massachusetts* (1958).

11. YES. The U.S. Supreme Court decided a government does not have unlimited power to allow or prevent peaceful and orderly public meetings. In this case, the officials had violated constitutional rights guaranteed by the First Amendment. See *Niemotkov v. Maryland* (1951).

12. NO. The U.S. Supreme Court ruled that there are limits to an individual's constitutional right of free speech. Thus, a government may pass and enforce laws against noises that cause public disturbance. See *Kovacs v. Cooper* (1949).

13. NO. A person has the constitutional right to a trial by jury, but the Constitution does not specify how many people should serve on a jury. (See Amendment VI.) See *Williams v. Florida* (1970).

14. YES. The U.S. Supreme Court decided that this case involved a violation of the woman's constitutional right of "due process" (fair and equal treatment under the laws), which Amendment V guarantees. See *Frontiero v. Richardson* (1973).

15. YES. The U.S. Supreme Court decided that this kind of search violates the constitutional guarantee against unreasonable search and seizure, a guarantee written into the Fourth Amendment. See *Chimel v. California* (1969).

III-12. OPINIONS ABOUT CIVIL LIBERTIES AND RIGHTS

LESSON PLAN AND NOTES FOR TEACHERS

Preview of Main Points

This lesson focuses attention on the meaning of civil liberties and rights in the Constitution. Students respond to an opinion survey derived in part from items used in polls by Harris, Remmers, and other social scientists. As the class interprets the results, questions are raised about the meaning of these rights and liberties in theory and in practice. The lesson concludes with an opportunity for students to compare their responses to actual attitude surveys and opinion polls administered to national samples of adults and students.

Connection to Textbooks

This lesson enriches textbook discussions of civil liberties and civil rights by giving students the opportunity to interpret relevant public opinion survey data not found in textbooks.

Objectives

Students are expected to:

1. React to statements about civil liberties and rights by completing an opinion poll.
2. Organize and interpret responses of class members to an opinion poll about civil liberties and rights.
3. Infer from data collected in national surveys that most Americans support general statements about civil rights and liberties.
4. Infer from given data that Americans' support for civil liberties and rights applied to specific cases is significantly less than for the general statements of rights.
5. Speculate about likely consequences for the nation arising from a split between theoretical acceptance and practical rejection of certain civil liberties and rights.

Suggestions for Teaching the Lesson

This lesson can serve as a "springboard" to textbook material about civil liberties and rights. Or the lesson could be an application exercise giving students an opportunity to use concepts learned in their textbook to interpret opinion poll data.

Opening the Lesson

- Explain that politicians and social scientists use public opinion surveys both as a guide to policy decisions and as a measure of the health and well-being of American democracy. Mention that our particular area of interest in this lesson is civil liberties and rights. This survey asks for their opinions about actions people should and should not be allowed to do.
- Instruct students not to put their names on the surveys, so that their responses will be anonymous. Following the directions on the survey, students should respond to each item according to their opinion. **This is not a test with correct or incorrect answers.**

Developing the Lesson

- Distribute copies of the survey. Be certain that students understand the directions for completing the opinion poll. Remind students not to put their names on the paper. Students should be finished within 10 minutes. They should respond quickly to each item.
- Collect all answer sheets when students have completed their tasks. Shuffle the papers and redistribute them to students in such a way that no student will have his or her own answer sheet.
- Distribute copies of STUDENT WORKSHEET 1 AND 2. Students should set aside WORKSHEET 2 momentarily. Notice on WORKSHEET 1 "Tallying Opinions About Civil Liberties and Rights," that the items have been placed in two groups.
- Begin with the smaller group of items—Group I—which includes Items 1, 5, 6, 8, and 11. For each item, ask students to raise their hands if the response on the sheet in front of them, for that item, is "Agree." Announce the total and record the number in the appropriate box on the Tally Sheet. Students should do the same on their copies of the Tally Sheet. In the same manner, record the number of "Disagree" responses for each item.
- Turn now to the remaining items. Notice first that the response categories ("Agree"/"Disagree") vary in their arrangement on the page under Group II. The reason for this lies in the fact that for some items (9, 13, 2, and 4), an "Agree" response indicates support for a particular right, as was the case for all items in Group I. For the remaining items, however, an "Agree" indicates **rejection** of that right. In Item 14, for example, a favorable response supports torture as punishment, thereby rejecting a belief that punishment should not be cruel or unusual. Thus, the alignment of reponse categories on the Tally Sheet ensures that **support** for civil rights and liberties is consistently recorded in the **first** (or left) column, and **rejection** is reflected in the **second** (or right) column.

  The same change relates to the order of items listed. This order was chosen to compare more easily responses toward specific applications of rights (items in Group II) to responses toward general statements about rights (Group I).

  The relationship of items to rights is as follows: freedom from cruel or unusual punishment (Item 1, 7, 14), freedom of speech (Items 5, 9, and 13), freedom of assembly (Items 6, 2, 10), freedom of the press (Items 8, 3, 4, and 12), and freedom from unreasonable searches and seizures (Items 11 and 15).
- With the two exceptions explained above, the procedure for tallying responses to Group II items is identical to that of Group I. Because of the different item display, however, students should be cautioned to look at the **correct item** of the survey before raising their hands to report a response, and then to place the total in the **correct box** for the **correct item** on the Tally Sheet.
- With all items now tallied, direct the students' attention to the first set of items. Lead a discussion in which students analyze their results, using the first section ("General Opinions About Rights") of WORKSHEET 2, "Interpreting Data About Civil Liberties and Rights."

Typically, students (and adults) respond very favorably to these general statements of rights, as will be evident when you present the results of other surveys later in the lesson.

- Moving to the second group of items in WORKSHEET 2, you might choose to explain the basis for the arrangement of items and responses on the Tally Sheet.
- Lead a discussion in which students analyze the results, using the second section ("Applying Rights to Specific Situations") of WORKSHEET 2. Typically, support for specific application of rights tends to be lower than for general belief statements. If this pattern is not evident in your students' set of responses, it will appear when they view results from national surveys.

Concluding the Lesson

- Distribute copies of "Opinions About Rights Applied to Situations (National Opinions Polls)" and STUDENT WORKSHEET 3. Note that some of the items on the survey they have taken are the same as, or similar to, questions asked to thousands of citizens, both pre-adults and adults.
- Have students interpret the national survey results and compare them to the results of their own survey. Questions 1-3 of WORKSHEET 3 can serve as a guide to their analysis.
- Have students discuss the implications of their findings for the health and well-being of the Bill of Rights. Question 3 of WORKSHEET 3 provides a catalyst for discussion.
- You may wish to have students discuss and/or explore issues and questions associated with any of the fifteen items in the public opinion poll. These items reflect constitutional issues in the lives of citizens.

Suggested Films

Free Press/Fair Trial

This film reports in-depth on the dilemma of balancing First Amendment guarantees of an uninhibited press and the public's right to know with the Sixth Amendment's guarantee of a defendant's right to a speedy and fair trial by an impartial jury. Film clips from the trials of Bruno Hauptman, Dr. Sam Sheppard, Billie Sol Estes, Lee Harvey Oswald, and Wayne Henley, Jr., plus clips of Nixon and Agnew claiming press prejudices, are included. WNET/Teaching Film Custodians, 1973, 30 minutes, black and white.

The Just and Essential Freedom

This film deals with Watergate, the Vietnam War, the Pentagon Papers, censorship, and disclosure of sources to examine the confrontations between government and the press under the First Amendment. Uses several Presidents to illustrate relations with the press. Through conflicts of Jefferson and Adams it explains the background of the First Amendment. Xerox Films, 1973, 52 minutes.

The Just Freedom

The First Amendment is examined in-depth, with examples of how the press operates at local and national levels. The film focuses on the important historical role of the news media in the United States, and compares U.S. newspaper and television news coverage with that of other countries. Associated Press, 1974, 22 minutes.

Speech and Protest

As an introduction to the First Amendment, this film dramatizes situations where freedom of speech or assembly might be questioned. Students discuss foreign policy and academic freedom. An anti-war demonstration at a chemical plant is enacted. Alternative conclusions are included. From the *Bill of Rights in Action* series, Churchill Films, 1967, 21 minutes.

III-12. OPINIONS ABOUT CIVIL LIBERTIES AND RIGHTS

We define **civil liberties** as those freedoms spelled out in a constitution. They provide legal guarantees protecting people and property against arbitrary interference by the government. Civil liberties restrain the government from abusing citizens in certain ways.

When the government acts to protect citizens against certain abuses by other citizens or government officials, it protects **civil rights.** The terms civil liberties and civil rights often mean the same thing.

Neither civil liberties nor civil rights, however, give people unlimited freedom. For example, a person's freedom of speech does not extend to inciting a riot or ruining another person's reputation by spreading lies.

What do Americans believe about the liberties and rights of people under the Constitution? What opinions do you hold about the freedoms and opportunities of people?

This lesson discusses responses to public opinion polls concerning people's freedoms under the Constitution. It will solicit your opinion. You will also examine the responses other Americans made to the same or similar public opinion poll items.

Directions for Responding to an Opinion Poll

Read each statement on this page below and place a check in the column that corresponds to your belief or opinion (Agree or Disagree). Answer each item separately and continue until you have completed all fifteen. Leave no blanks.

Respond to each item quickly, giving the first answer that comes to mind. This poll will not test your knowledge. There are no right or wrong answers.

Respond to the items in order, from 1-15. Answer each item before moving to the next one. Don't skip any items.

Once you have given an answer, do not erase or change it.

When you have finished, put down your pencil or pen and wait for further instructions.

PUBLIC OPINION POLL ABOUT CIVIL LIBERTIES AND RIGHTS

Items	**Responses**	
	Agree	**Disagree**
1. People should have the right not to be sentenced to cruel and unusual punishments.	_____	_____
2. The American Nazi Party wants to have a march and rally in your town. Your town should allow them to do this.	_____	_____
3. Newspapers that preach revolution should be banned.	_____	_____
4. Police and other groups have sometimes banned or censored certain books and movies in their cities. They should have the power to do this.	_____	_____
5. Every citizen should have the right to hold an orderly public meeting to express ideas.	_____	_____
6. Every citizen should have the right to voice any opinion she/he favors, which does not slander or include intentional lies.	_____	_____
7. A person convicted of murder should be executed in the same manner in which she/he killed the victim.	_____	_____
8. Citizens should have the right to print any point of view they want to print, as long as it is true.	_____	_____
9. If a leader of the Communist Party wanted to give a speech in this town advocating a change in our form of government, she/he should be allowed to speak.	_____	_____

10. Atheists should be allowed to give speeches on the radio or television. _____ _____

11. The law should protect people from unreasonable searches and seizures. _____ _____

12. Books that support communism or atheism should be removed from the library. _____ _____

13. A woman should have the right to speak at a community meeting, urging that a law be passed that would limit the number of children a family can have. _____ _____

14. Torture is not too strong a punishment for a drug pusher convicted of giving heroin to a 12-year-old. _____ _____

15. To effectively combat terrorism, police must sometimes secretly break into the headquarters of suspects to obtain evidence. _____ _____

STUDENT WORKSHEET 1

Tallying Opinions About Civil Liberties and Rights

Group I	Group II
Item 1 Agree ____ Disagree ____	Item 7 Disagree ____ Agree ____ Item 14 Disagree ____ Agree ____
Item 5 Agree ____ Disagree ____	Item 9 Agree ____ Disagree ____ Item 13 Agree ____ Disagree ____
Item 6 Agree ____ Disagree ____	Item 2 Agree ____ Disagree ____ Item 10 Disagree ____ Agree ____
Item 8 Agree ____ Disagree ____	Item 3 Disagree ____ Agree ____ Item 4 Agree ____ Disagree ____ Item 12 Disagree ____ Agree ____
Item 11 Agree ____ Disagree ____	Item 15 Disagree ____ Agree ____

STUDENT WORKSHEET 2

Interpreting Data About Civil Liberties and Rights

General Opinions About Rights (Group I)

1. Which of these five items received the greatest support in your class? (Support is indicated by the total score in the left-hand column "Agree.") ______________________________

2. Does any pattern (general tendency) emerge in class responses to these items? ______________ If so, describe the pattern.

   ____

3. Write a one-sentence summary statement, supported by these data (responses to items in Group I), that describes your class's opinions about civil liberties and rights in the Constitution.

   ____

   ____

Applying Rights to Specific Situations (Group II)

In answering these questions, note that "support" for rights is indicated by the total scores in the left-hand column, sometimes "Agree," sometimes "Disagree."

1. Which item received the greatest support from your class? ______________________

   Which item received least support? ______________________________

2. Does any pattern (general tendency) emerge in the responses to these items? __________ If so, **describe** the pattern and **compare** it to the pattern of responses in Group I items.

   ____

   ____

   ____

3. Notice that each item of Group I is associated with one, two, or three items in Group II. Circle the response below that most accurately describes the correspondence (general tendency) of results from these two groups.

   a. Support for Item 1 is (stronger, the same, weaker) than support for Items 7 and 14.

   b. Support for Item 5 is (stronger, the same, weaker) than support for Items 9 and 13.

   c. Support for Item 6 is (stronger, the same, weaker) than support for Items 2 and 10.

   d. Support for Item 8, is (stronger, the same, weaker) than support for Items 3, 4, and 12.

   e. Support for Item 11 is (stronger, the same, weaker) than support for Item 15.

4. You may have discovered that the items in Group II asked you to apply a right to a specific situation. In Group I, you were responding to the rights in general. Given the pattern of responses you've found, and the comparisons in question 3, what general statements can you make to describe your class's opinions about civil liberties and rights?

   a. ____

   ____

   b. ____

   ____

RESULTS OF NATIONAL OPINION POLLS

So far you've explored your own and your classmates' attitudes toward parts of the Bill of Rights. Many of the statements to which you responded in this survey, however, have appeared in national surveys of both adults and students. In interpreting the results of those surveys, you will want to focus on three questions.

1. Does a pattern of results emerge from these surveys?
2. If so, how does it compare to your own survey findings?
3. How can we explain these results overall?

General Attitudes

Over the years, the vast majority of Americans have expressed strong support for general statements of rights. More than 90 percent of respondents have agreed that:

1. The minority should be free to criticize majority opinions.
2. People in the minority should be free to try to win majority support.
3. Citizens have the right to express any opinion they wish.

Similar majorities agree that people should have the right to hold meetings and to print any point of view.

However, as shown below, people have not been as likely to agree that unpopular individuals or groups should enjoy certain civil liberties and rights.

Opinions About Rights Applied to Situations
(National Opinion Polls)

	Agree
1. Torture is an acceptable punishment (Item 14).	47% (1)
2. Prevent woman's speech about limiting family size (Item 13).	*60% (2)
3. Ban speech by unpopular individual (Item 10).	56% (3)
4. Review protest meeting to prevent advocating a change in the government (Item 9).	53% (1)
5. Ban newspapers that preach revolution (Item 3).	52% (1)
6. Ban or censor certain books and movies (Item 4).	*60% (4) 57% (1)
7. Outlaw groups that preach government overthrow.	67% (1)
8. Prevent newspaper from publishing criticism of elected officials.	*33% (2)
9. Should not allow atheist to hold office.	*34% (2)
10. Should have laws against publishing communist literature.	*61% (4)

---

*High school students; all others are adult respondents.

(1) Louis Harris. *The Anguish of Change* (New York: W. W. Norton & Co., Inc., 1973), 278-282.

(2) National Assessment of Educational Progress. *Changes in Political Knowledge and Attitudes, 1969-76* (Denver: Education Commission of the States, 1978), 7-14.

(3) James Prothro and Charles Grigg. "Fundamental Principles of Democracy," *Journal of Politics*, Vol. 22, (1960): 276-294.

(4) H.H. Remmers. *Anti-Democratic Attitudes in American Schools* (Evanston: Northwestern University Press, 1963), 61-72.

STUDENT WORKSHEET 3

1. Considering the responses to both general statements of rights and specific applications of these rights, how would you describe Americans' opinions about civil liberties and rights. (Remember, your description should be supported by the data presented on page 179.)

2. Compare these national survey results to those of your class. In what ways are they similar or different?

   a. In the light of survey results, how do you think **most Americans**, of recent years, would have reacted to this statement by Voltaire: "I disapprove of what you say, but I will defend to the death your right to say it."

   b. What is your reaction to Voltaire's statement?

III-13. WHAT DOES THE CONSTITUTION SAY ABOUT CIVIL LIBERTIES AND RIGHTS?

LESSON PLAN AND NOTES FOR TEACHERS

Preview of Main Points

The purpose of this lesson is to increase students' knowledge of certain parts of the Constitution that pertain to civil liberties and rights.

Connection to Textbooks

This lesson can be used to reinforce American government and civics textbook treatments of constitutional liberties and rights. The lesson can be used to supplement American history textbook discussions of main principles of the Constitution, which usually follow treatments of the Constitutional Convention.

Objectives

Students are expected to:

1. Demonstrate knowledge of the constitutional guarantees of civil liberties and rights by responding with a "YES" or "NO" answer to each item in the lesson.
2. Support their response to each item by listing the correct reference in the U.S. Constitution by Article and Section or Amendment.
3. Increase knowledge of certain parts of the Constitution that pertain directly to civil liberties and rights.
4. Practice skills in locating and comprehending information in the U.S. Constitution.
5. Increase awareness of how the Constitution applies to the concerns of citizens.

Suggestions for Teaching the Lesson

Opening the Lesson

- Inform students of the main points of the lesson.
- Be certain that students understand the directions for the lesson.

Developing the Lesson

- Have students work individually or in small groups to complete the items in this lesson.
- You may wish to have different students report their answers to the items in this lesson. An alternative is to distribute copies of the answers, when appropriate, so that students can check their responses against the correct answers.

Concluding the Lesson

- Ask students to explain what each item in the exercise has to do with civil liberties and rights. By doing this, students can demonstrate comprehension of the idea of civil liberties and rights.
- You may wish to have students examine and discuss in more detail issues and questions associated with the items of this lesson.

ANSWERS TO EXERCISES FOR LESSON III-13

1. NO, Article I, Section 9, Clause 2.
2. YES, Amendment I.
3. NO, 24th Amendment.
4. NO, Article, I, Section 9, Clause 3.
5. NO, 4th and 14th Amendments.
6. NO, 5th Amendment.
7. NO, 1st and 14th Amendments.
8. NO, 1st and 14th Amendments.
9. NO, 1st and 14th Amendments.
10. NO, 1st and 14th Amendments.

III-13. WHAT DOES THE CONSTITUTION SAY ABOUT CIVIL LIBERTIES AND RIGHTS

Read each of the following statements. Decide whether or not each statement describes a situation that agrees with the words of the U.S. Constitution. **If so,** answer YES. **If not,** answer NO. Circle the correct answer under each statement.

Identify the number of the Article and Section or the Amendment to the Constitution which supports your answer. Write this information on the line below each item.

CLUE: Answers to these items can be found either in Article I, Sections 9 and 20, or in Amendments I-VIII or in Amendments XIV-XXVI.

1. The President, with approval from Congress, suspended the writ of Habeas corpus in order to intimidate and silence critics of the government.

YES NO

2. A group of state legislators from New England, who were opposed to the President, held a peaceful protest demonstration on the sidewalk in front of the White House.

YES NO

3. Mr. Rice was denied the right to vote in a presidential election because he had not paid his poll tax.

YES NO

4. Federal government officials arrested John Evans for breaking a law that had been passed three months after Evans committed the action that led to his arrest.

YES NO

5. Police were conducting a house-to-house search looking for evidence of illegal activities. When asked by one resident for a search warrant, the police replied that they didn't need one and entered the house despite the resident's objections.

YES NO

6. Joe Smith was arrested for bank robbery, tried, and found not guilty by a federal court. Two years later, he was arrested and tried a second time by the federal government. This time the jury found him guilty.

YES NO

7. A classroom teacher criticized the policies of the local juvenile court. A deputy sheriff took him from his classroom, without a warrant, to the judge's chambers for an official reprimand.

YES NO

8. The Ku Klux Klan petitioned the city council of a small Midwestern city for the right to hold a peaceful demonstration around the court house square. It was denied.

YES NO

9. A public school system fired teachers who did not belong to a Christian church, because the majority of citizens in the community demanded that this be done.

YES NO

10. A local newspaper published several news stories severely criticizing the town's police chief and city council. The city council warned the paper's editor that the paper would be closed by the police if it printed any more critical stories.

YES NO

III-14. KEY TERMS FOR UNDERSTANDING CIVIL LIBERTIES AND RIGHTS

LESSON PLAN AND NOTES FOR TEACHERS

Preview of Main Points

The purpose of this lesson is to help students build a basic vocabulary that may help them to understand the Constitution. The key words in this lesson pertain to civil liberties and rights. This lesson provides practice in the use of words associated with civil liberties and rights.

Connection to Textbooks

The words in this lesson are related to discussions of civil liberties and rights found in American government, civics, and history textbooks. Practice in using these words may help students to read certain parts of their textbooks more effectively.

Objectives

Students are expected to:

1. Demonstrate comprehension of key words about civil liberties and rights by completing the matching exercise in this lesson.
2. Discuss the key words so as to demonstrate knowledge of civil liberties and rights.

Suggestions for Teaching the Lesson

Opening the Lesson

- Tell students that the point of the lesson is to provide practice in using key words about civil liberties and rights.
- Remind students of the value of learning key words about aspects of the Constitution. This enables them to communicate better with one another about a topic of importance to every citizen.

Developing the Lesson

- Distribute the worksheet with the matching exercise.
- Have students work individually or in small groups to complete the worksheet.
- Tell students that they might use the glossary in their textbook or other pertinent reference material to help them complete the lesson.

Concluding the Lesson

- Check answers by asking students to report their responses to the matching exercise.
- Ask students to elaborate upon their responses by explaining, in their own words, the meaning of particular key words of this lesson. Students also might be asked to supply their own examples of certain words or to tell how a particular term may pertain to the concerns of citizens.

ANSWERS TO MATCHING EXERCISE

1. I
2. D
3. B
4. G
5. A
6. C
7. E
8. J
9. B
10. F
11. H
12. J
13. G
14. B
15. I

III-14. KEY TERMS FOR UNDERSTANDING CIVIL LIBERTIES AND RIGHTS

Match the ten words or phrases in **List I** with the fifteen statements that follow in **List II**. Write the letter, which identifies the correct answer in **List I**, in the space next to the appropriate statement in **List II**. Each item in **List I** may be used as an answer one or more times.

LIST I

A. Immunity from Double Jeopardy
B. Writ of Habeas Corpus
C. Due Process of Law
D. *Ex Post Facto* Law
E. Bill of Attainder
F. Freedom of Assembly
G. Popular Sovereignty
H. Separation of Church and State
I. Suffrage
J. Bill of Rights

LIST II

____ 1. The right to vote for representatives in government.

____ 2. A law that makes a crime an act that was legal when it was committed.

____ 3. According to Article I, Section 9, of the U.S. Constitution, this privilege of citizens may be suspended only during an invasion or rebellion, and only then if it is necessary for the public safety.

____ 4. Final authority for the government comes from those who are governed.

____ 5. The guarantee in the Fifth Amendment that a person who has been tried and found innocent once may not be tried again for the same crime.

____ 6. Each person accused of a crime is supposed to be treated equally according to established legal procedures.

____ 7. A law declaring a person, without a trial, to be guilty of a crime.

____ 8. Amendments to the Constitution which limit the power of the federal government to deprive citizens of certain liberties and opportunities.

____ 9. A court order that requires an official who has arrested a person to bring the prisoner to court and show cause for detaining the person.

____ 10. The civil liberty that provides people with the right to organize into political parties or interest groups for the purpose of influencing the government.

____ 11. The government may not pass a law to establish one official religion for the United States.

____ 12. These liberties and opportunities can be used to limit the powers of state governments through the "due process" clause of the Fourteenth Amendment.

____ 13. The Constitution can be amended by representatives of the people, who express the wishes of a majority of the people.

____ 14. A civil liberty that prevents the arresting and jailing of a person without sufficient evidence that the person may have committed a crime.

____ 15. Amendments Fifteen, Nineteen, and Twenty-six prohibit the government from denying this right to certain groups of citizens.

CHAPTER IV

Amending and Interpreting the Constitution

OVERVIEW FOR TEACHERS

This chapter includes fourteen lessons, which treat formal and informal means of constitutional change. Major constitutional principles have been shaped and modified through formal amendment, judicial interpretation, and precedents established by the executive and legislative branches of government. Thus, the Constitution in practice has been dynamic and fluid within a certain framework, as anticipated by the framers. James Madison, for example, said, "In framing a system which we wish to last for ages, we should not lose sight of the changes which ages will produce."*

George Washington also acknowledged the need for continual appraisal of our Constitution. He wrote that "the warmest friends and the best supporters the Constitution has do not contend that it is free from imperfections. . . ." He called upon Americans of his day and subsequent generations to decide "on the alterations and amendments which are necessary. . . . I do not think we are more inspired, have more wisdom, or possess more virtue than those who will come after us."**

Constitutional interpretation and change began with the first meeting of Congress and has continued ever since that time. The lessons in this chapter provide examples of citizens coping with constitutional issues in the form of proposed amendments and decisions by the executive, congressional, and judicial branches of government.

Lessons IV-1 to IV-3 pertain to the formal process of amending the Constitution. Lessons IV-4 to IV-14 pertain to constitutional change through interpretation and precedents.

These lessons are not designed as a comprehensive treatment of constitutional change in the United States. They should be used as supplements to high school textbooks in American government and history. It is assumed that high school textbooks and courses will provide appropriate contexts for the use of these lessons.

LIST OF LESSONS IN CHAPTER IV

IV-1. Purposes of Amendments

IV-2. Passage of the Twenty-Sixth Amendment

IV-3. A New Constitutional Convention: Another Way to Amend the Constitution

IV-4. The Origin of Political Parties

IV-5. The Whiskey Rebellion: A Test of Federal Power

IV-6. Stretching the Constitution: Jefferson's Decision to Purchase Louisiana

IV-7. The Court and Development of the Commerce Power

IV-8. Two Responses to a Constitutional Crisis: Decisions of Buchanan and Lincoln About Secession

IV-9. Pathway to Judgment: *Near v. Minnesota* (1931)

IV-10. Overruling Precedent: The Flag Salute Cases

IV-11. The Court's Use of Dissent

IV-12. Constitutional Rights in a Time of Crisis, 1941-1945

IV-13. The Limits of Presidential Power: Truman's Decision to Seize the Steel Mills

IV-14. You Be the Judge: The Case of *Camara v. Municipal Court of San Francisco*, 1967

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*Quoted in Edwin C. Rozwenc and Frederick E. Bauer, Jr., *Liberty and Power in the Making of the Constitution* (Boston: D. C. Heath and Company, 1963), 6.

**Quoted in Saul K. Padover, *The Living U.S. Constitution* (New York: The New American Library, A Mentor Book, 1953), 20.

IV-1. PURPOSES OF AMENDMENTS

LESSON PLAN AND NOTES FOR TEACHERS

Preview of Main Points

Several political scientists have developed a useful set of categories for understanding the purposes served by Amendments Eleven through Twenty-six. The categories used here are based in part on James MacGregor Burns, J. W. Peltason and Thomas E. Cronin, *Government by the People,* 11th ed. (Englewood Cliffs, New Jersey: Prentice-Hall, Inc., 1981), 44-45. This lesson presents a version of these categories to students and gives them the opportunity to use the categories to group amendments. A main purpose is to help students more fully understand the contribution of Amendments Eleven through Twenty-six to American political life.

Connection to Textbooks

This lesson can enrich brief descriptions of the formal amendment process or listings of amendments found in standard texts. It gives students a framework for seeing how the amendment process has, in effect, been used.

Objectives

Students are expected to:

1. Classify Amendments Eleven through Twenty-six in terms of five categories.
2. Deepen their knowledge of the content of Amendments Eleven through Twenty-six.
3. Learn the five major purposes served by Amendments Eleven through Twenty-six.

Suggestions for Teaching the Lesson

This lesson provides an in-depth look at Amendments Eleven through Twenty-six. It can also help students develop skills in comprehending and classifying information.

Opening the Lesson

- Tell students Chief Justice John Marshall once said that the Constitution was "intended to endure for ages to come, and consequently to be adapted to the various crisis of human affairs."
- Remind students that one way the Constitution has been "adapted to . . . human affairs" is through **formal amendment.** Note that beyond the Bill of Rights the Constitution has been amended sixteen times.
  You might note that the two amendments—the Eighteenth and Twenty-first—cancelled each other out by first establishing and then repealing Prohibition.
- Point out that the sixteen amendments beyond the Bill of Rights serve a variety of purposes. Explain that this lesson will help students better understand these purposes.

Developing the Lesson

- Have students read the material describing the five categories for classifying amendments. Discuss these categories with the class to ensure students' understanding.
- Instruct students **to find Amendments Eleven through Twenty-six in the Constitution.** Have students read each amendment and place it under the appropriate purpose on the student worksheet. As the examples on the worksheet show, students should list both the amendment and its content. Students could work individually or in groups.
- Provide "feedback" about answers. Use the answer sheet on the next page as a guide to discussion of answers with students.
  Note: There can be more than one correct answer here. **It is possible for students to differ reasonably in some of their classifications of amendments in terms of the five categories provided in this lesson.** For example, one might include Amendments Nineteen, Twenty-four and Twenty-six in category two. Certainly, these three amendments also fit in category three. Students should be able to justify their categorizations.
  In addition, note that several amendments can be seen as serving more than one purpose. Amendment Fifteen for example, served purposes number two and three. (See answer sheet).

Concluding the Lesson

- Discuss student responses. These questions might prompt discussion:
  1. Which purpose has the greatest number of amendments listed?
  2. Which purpose do you think is more important? Which purpose is least important? Give reasons for your answers.

ANSWER SHEET FOR LESSON IV-1

Five Purposes Served by Amendments Eleven Through Twenty-Six

1. **Amendments that add to or subtract from the national government's power.**

Amendment	Content
11th	Deprived federal courts of jurisdiction in lawsuits against states.
13th	Abolished slavery. Said Congress could legislate against slavery.
16th	Gave Congress power to levy an income tax.
18th	Gave Congress power to prohibit making, selling, or transporting alcoholic beverages.
21st	Repealed the Eighteenth and gave states power to regulate liquor.

Note: Students might correctly include Amendments Fourteen and Fifteen in category 1. Section 5 of the Fourteenth Amendment and Section 2 of the Fifteenth Amendment add to the national government's power by granting to Congress the power to enforce the provisions of those amendments.

2. **Amendments that limit the power of state governments.**

Amendment	Content
13th	Took away states' power to permit slavery.
14th	Limited state government powers to interfere with civil rights.
15th	Barred states from denying any citizen the right to vote because of race, color, or previous condition of servitude.

Note: Students might correctly include Amendments Nineteen, Twenty-four, and Twenty-six in category 2. Amendments Nineteen and Twenty-six deprive the states (and the national government) from denying the right to vote to certain groups of people. Amendment Twenty-four stops any state government from imposing a tax as a prerequisite to voting.

3. **Amendments that expand the right to vote and give voters greater power.**

Amendment	Content
15th	Extended suffrage to black males.
17th	Gave voters in each state the right to elect their senators directly.
19th	Extended suffrage to women.
23rd	Gave District of Columbia voters the right to vote for President and Vice President.
24th	Forbids any state to impose a tax on the right to vote (a poll tax).
26th	Extended suffrage to those 18 years of age.

4. **Amendments that change the structure of our governmental machinery.**

Amendment	Content
12th	Corrected problems in method of electing President and Vice President.
20th	Changed the calendar for congressional sessions and the time between when Presidents are elected and when they take office.
22nd	Limits a President to a maximum of two elected terms.
25th	Provides procedures to fill vacancies in the vice presidency, and to determine if and when Presidents are unable to carry out their duties.

Note: Amendments Eleven, Thirteen through Fifteen, and Seventeen might also be added to this list of possible right answers. The Eleventh Amendment limited the jurisdiction of the Supreme Court, and in the process changed the relationship of the states to the national government. The Civil War amendments totally altered the relationship between the states and federal government. Because they fundamentally changed the nature of American federalism, these amendments changed the machinery of government. Similarly, the Seventeenth Amendment changed the way Senators are elected and altered the relationships between the states and the federal government. In the broadest sense these five amendments changed the machinery of the government.

5. **Amendments that limit the behavior of individuals toward other individuals**

Amendment	Content
13th	Prohibits one individual from holding another in slavery or involuntary servitude. This amendment has been the basis of decisions prohibiting discrimination in the sale of houses, as well as prosecutions for holding people in slavery or involuntary servitude.
14th	Protects the civil rights of persons in the United States. Federal statutes have been used to prosecute those who deny people their civil rights.
15th	Prohibits discrimination in voting on the basis of race. Has been used to prosecute individuals who have used violence to prevent blacks and other minorities from voting.
18th	Prohibited individuals from manufacturing, transporting, or selling "intoxicating liquors."
21st	Repealed the Eighteenth Amendment, and allowed the manufacture, transportation, or sale of "intoxicating liquors" by individuals.

IV-1. PURPOSES OF AMENDMENTS

Our Constitution has been amended twenty-six times since 1791. The first ten amendments make up the Bill of Rights which was ratified in 1791. These amendments (one through ten) describe many of our basic rights and liberties.

What about the other sixteen amendments? What purposes do Amendments Eleven through Twenty-six serve? We can group the remaining sixteen amendments into the five categories explained below. These categories show ways Amendments Eleven through Twenty-six have shaped the powers of government and our political life.

Purposes Served by the Amendments

The sixteen amendments passed after the Bill of Rights serve five major purposes. **First, several amendments add to or subtract from the national government's power.** The Eleventh and Thirteenth Amendments are good examples. The Eleventh Amendment (added to the Constitution in 1798) says the federal courts have no power to hear lawsuits brought by private citizens against a state government. This amendment passed as a reaction to a 1793 case in which two South Carolina citizens had taken the State of Georgia into federal court. The South Carolina citizens were suing Georgia on behalf of a British creditor whose property was taken away by Georgia. Lawmakers added the Eleventh Amendment to prevent such cases in the future.

The Thirteenth Amendment (1865) abolished slavery and gave Congress the power to legislate against slavery. The Amendment states, "Congress shall have the power to enforce this article by appropriate legislation."

Second, some amendments limit the power of state governments. The Thirteenth Amendment also served this purpose when it abolished slavery.

The Fourteenth Amendment (1868) limits the powers and actions of state governments. That amendment says that no state "shall deprive any person of life, liberty or property, without due process of law" nor deny anyone "equal protection of the laws."

Since the 1920s the Supreme court has used the "due process" clause to extend many protections of the Bill of Rights to citizens of respective state governments. For example, in 1925 the Court ruled that the "due process" clause meant state governments could not interfere with a person's First Amendment right to free speech.

In the 1930s, the Supreme Court began to apply the "equal protection" clause to prohibit racial discrimination. It was not until the 1950s, however, that the clause became the chief weapon in the battle against state laws requiring or allowing segregation. Since the 1960s, the Court has applied the clause in cases involving discrimination on the basis of sex, race, nationality, and economic status.

Third, some amendments expand the right to vote and give voters greater power. Several amendments serve this purpose. For example, the Seventeenth Amendment (1913) gives voters in each state the right to elect their U.S. senators. Until the passage of this amendment state legislatures elected senators.

Fourth, some amendments change the structure of our governmental machinery. The Twelfth Amendment (1804), for example, changed the electoral college rules for electing the President and the Vice President. It provides that presidential electors vote separately for President and Vice President.

Fifth, some amendments limit the behavior of individuals towards other individuals. The Thirteenth Amendment, for example, prohibits any person from holding another person in involuntary servitude. As recently as 1983, the courts have convicted individuals for violating statutes passed to enforce the Thirteenth Amendment. These individuals prevented migrant farm workers from traveling to other jobs and thus enslaved them. Individuals have also been prosecuted for denying people the civil rights granted them under the Fourteenth Amendment. Similarly, the federal government has prosecuted individuals for preventing people from exercising their right to vote, as guaranteed by the Fifteenth Amendment. Prosecutions under the Fourteenth and Fifteenth Amendments have been based on Congress's power to enforce the amendments, even though the drafters of the amendments directed them against the states.

EXERCISES FOR LESSON IV-1

Reviewing and Using the Five Statements About Purposes of Amendments

There are five uses of Amendments Eleven through Twenty-six of the U.S. Constitution. These purposes are discussed above. Summarized, these purposes are as follows:

1. Several amendments add to or subtract from the national government's power.
2. Some amendments limit the power of state governments.
3. Some amendments expand the right to vote and give voters greater power.

4. Some amendments change the structure of our governmental machinery.
5. Some amendments place limitations on the actions of individuals, either directly or indirectly, through the power of Congress to enforce the amendments.

You can use these five statements of purpose to organize and interpret Amendments Eleven through Twenty-six. Complete the following tasks, which require review and use of the five statements about purposes of amendments.

1. Find Amendments Eleven through Twenty-six in a copy of the U.S. Constitution.
2. Read each amendment.
3. Which of the five purposes is served by each of the amendments? Use the student worksheet that follows to help you answer this question.
   Note: Some amendments can be seen as serving more than one purpose. You could list an amendment more than once. Explain your reason each time you list an amendment.
4. In your opinion, which purpose is the most important? Which one is the least important? Explain.

STUDENT WORKSHEET

Five Purposes Served by Amendments Eleven Through Twenty-six

1. **Amendments that add to or subtract from the national government's power.**

Amendment	**Content**
a. 11th	a. Deprived federal courts of jurisdiction in lawsuits against states.
b. 13th	b. Abolished slavery. Said Congress could legislate against slavery.
c. ____	c. ____
d. ____	d. ____
e. ____	e. ____
f. ____	f. ____

2. **Amendments that limit the power of state governments.**

Amendment	**Content**
a. ____	a. ____
b. ____	b. ____
c. ____	c. ____
d. ____	d. ____
e. ____	e. ____
f. ____	f. ____

3. **Amendments that expand the right to vote and give voters greater power.**

Amendment	**Content**
a. ____	a. ________________
b. ____	b. ________________
c. ____	c. ________________
d. ____	d. ________________
e. ____	e. ________________
f. ____	f. ________________

4. **Amendments that change the structure of our governmental machinery.**

Amendment	**Content**
a. ____	a. ________________
b. ____	b. ________________
c. ____	c. ________________
d. ____	d. ________________
e. ____	e. ________________
f. ____	f. ________________

5. **Amendments that limit the behavior of individuals towards other individuals.**

Amendment	**Content**
a. ____	a. ____________________
b. ____	b. ____________________
c. ____	c. ____________________
d. ____	d. ____________________
e. ____	e. ____________________
f. ____	f. ____________________

IV-2. PASSAGE OF THE TWENTY-SIXTH AMENDMENT

LESSON PLAN AND NOTES FOR TEACHERS

Preview of Main Points

This lesson is a case study of the history of the Twenty-Sixth Amendment. The lesson describes the role of congress, the President, and the Supreme Court in events leading to passage of the amendment. Information from Gallup polls is used to describe the shifting pattern of public attitudes toward the 18-year-old vote.

Connection to Textbooks

This lesson may be used to enrich history and government textbook descriptions of the formal process used to amend the Constitution. The lesson could also supplement government textbook discussion of the expansion of voting rights. Further, the lesson could supplement history textbook discussions of the Vietnam era.

Objectives

Students are expected to:

1. Tell how, throughout the nation's history, different groups have won the right to vote.
2. Explain the origin of the 21-year-old voting requirement in the United States.
3. Use evidence in a table to draw conclusions about public attitudes toward lowering the voting age to 18.
4. Explain the role of Congress, the President, and the Supreme Court in events leading to passage of the Twenty-sixth Amendment.
5. Develop some awareness of the political dynamics involved in the formal amendment process.

Suggestions for Teaching the Lesson

Opening the Lesson

- Remind students that while 18 is now the minimum voting age, it was higher until fairly recently.
- Preview the lesson for students by explaining its purpose and how it is linked to the material they are studying.

Developing the Lesson

- Have students read the case study. Conduct a discussion of the questions in "Reviewing Facts and Main Ideas" to ensure that students have understood these main ideas.
- Have students examine the table and answer the questions under "Interpreting Evidence."

  Note: You might make a transparency of the table and use it as an aid to class discussion.

Concluding the Lesson

- Ask students to rank three factors from "most" to "least" in terms of their importance to the passage of the Twenty-sixth Amendment. The factors are: (1) the Supreme Court's decision in *Oregon v. Mitchell,* (2) Congress' passage of the 1970 Voting Rights Act, and (3) the upcoming 1972 presidential election. Have students give reasons for their ranking.

  Note: There is no correct answer here. The object is to give students an opportunity to apply what they have learned by using information from the case-study to defend their ranking.

Suggested Reading

An excellent resource that contains many teaching suggestions is: Patrick, John J., and Allen D. Glenn. *The Young Voter: A Guide to Instruction About Voter Behavior and Elections.* National Council for the Social Studies, Washington, D.C., 1972.

IV-2. PASSAGE OF THE TWENTY-SIXTH AMENDMENT

Chuck Hermann was both nervous and proud as he approached the polling place. He was about to vote for the first time in his life. "Thank heavens the line isn't too long," he thought. Chuck had allowed just enough time to vote before going to his first period class at Winchester High School.

As he entered the voting booth, Chuck concentrated on how to work the voting machine. He did not give a thought to the fact that his parents could not have voted when they were 18. How did Chuck and millions of teenagers like him gain the right to vote?

The Twenty-sixth Amendment to the Constitution lowered the voting age in the United States from 21 to 18. Formal amendment is one important way lawmakers have changed our Constitution and kept it up to date over time. This lesson presents the story of the Twenty-sixth Amendment.

The Right to Vote

All societies that choose public officials through elections must answer the question: Who shall be allowed to vote? During much of our history various laws denied the right to vote to many groups: propertyless men, black people, Indians, poor people, women, illiterates, and teenagers. During the colonial period, there were numerous religious tests for voting. At one time or another, various edicts denied Episcopalians, Baptists, Quakers, Catholics, and Jews the ballot in one or more of the colonies. The gradual expansion of the right to vote has been an important part of the American heritage.

Religious tests for voting, for example, disappeared in the period following the Revolution. By 1850 legislators had repealed most property qualifications for voting. On the other hand, racial qualifications still denied the ballot to most blacks. When the Civil War began, only a few Northern states allowed black males to vote. The 1870 ratification of the Fifteenth Amendment granted black males the vote throughout the nation. However, numerous laws, the refusal of white officials to allow blacks to vote, and violence and intimidation effectively nullified that right in much of the South. Only with the passage of the 1965 Voting Rights Act and through the constant monitoring of elections by federal officials, did blacks gain full access to the ballot box in the South.

Many states also denied women the ballot throughout most of American history. In 1848 a number of women met at Seneca Falls, New York to protest against discrimination against women on a broad range of economic, social, and legal issues, including the denial of the right to vote. For years male legislators ignored the pleas of women activists, called suffragists, who demanded the right to vote. In 1900, only four Western states allowed women to vote. By 1916, eleven states allowed women to vote.

After World War I, however, the women's suffrage movement gained strength. Women had played an important role in the war effort and had organized much more aggressively to secure passage of a constitutional amendment to guarantee their voting rights. One wing of the suffrage movement even engaged in civil disobediance to call attention to the unfairness of denying women the right to vote. In June 1919, Congress sent the suffrage amendment to the states; in August 1920, Tennessee became the thirty-sixth state to ratify it, adding it to the Constitution as the Nineteenth Amendment.

Age Limits on Voting. In the United States 21 has been traditionally considered the age when one legally becomes an adult. This custom came to America with English settlers during the Colonial period. In keeping with this tradition, 21 became the minimum voting age in most of the United States.

Changes in this tradition came slowly. In 1943, Georgia lowered the voting age from 21 to 18. In 1955, Kentucky did the same thing. In 1959, Alaska set the voting age at 19, and Hawaii set it at 20. Despite efforts to induce other states to lower the voting age in the 1950s and 1960s, no other states did so.

Public Attitudes Toward the 18-Year-Old Vote

What did the public think about teenagers voting? Until World War II (1939-1945) strong popular disapproval usually greeted suggestions to lower the voting age. However, with the onset of World War II the public's attitude began to change, as the table clearly shows.

TABLE

American Attitudes Toward Lowering the Voting Age
(From Gallup Polls)

	Favor	Oppose	No Opinion
1939—May 18	17%	79%	4%
1943—Aug. 17	52	42	6
1946—Apr. 10	44	52	4
1951—Sept. 21	47	49	4
1953—July 4	63	31	6
1965—Aug. 25	57	39	4
1968—Sept. 22	66	31	3
1970—Mar.	56	40	4

Source: Erskine, Hazel. "The Polls: The Politics of Age." *Public Opinion Quarterly* 35 (Fall 1971): 482-495.

During World War II, millions of young Americans were drafted to serve in the military. Many, while considered old enough to fight and die for their country, were still too young to vote. Polls during the war indicated a great shift in opinion toward the lowering of the voting age. In the midst of this war, a majority of the public began to favor lowering the voting age.

The draft of young Americans ended with the conclusion of the war. Interest in lowering the voting age seemed to fade. When the draft resumed in the late 1940s there was no corresponding strong pressure to reduce the voting age, although a majority of Americans favored a reduction during the 1950s and early 1960s.

A Controversy Arises. During the late 1960s, a public debate began over lowering the voting age to 18. The debate stemmed in part from the growing involvement of many young people in the political issues of the day. Many observers saw young people in the forefront of those seeking changes in race relations, student rights, environmental protection, and women's rights.

By the late 1960s, the single most important policy issue was the nation's military involvement in Vietnam. Hundreds of thousands of young men, some too young to vote, were going to fight and possibly die in Southeast Asia. Many citizens felt our government was mistaken to continue this war. Others supported the war.

As the 1960s drew to a close, many young people participated in anti-war rallies and demonstrations. Some observers argued that the young, unable to vote, had no other legitimate means of voicing their concerns about government policies. Others responded that lowering the voting age was not the answer to the nation's problems and was unnecessary. The debate might still be going on had not Congress, the Supreme Court, and an upcoming presidential election come into the picture.

Congress and the Supreme Court Act

In 1970 Congress passed the Voting Rights Act, which lowered the voting age throughout the country for national, state, and local elections. Members of the Democratic party in Congress strongly supported the bill. They anticipated that a large number of younger voters would vote for Democratic candidates in the 1972 elections. President Richard Nixon, a Republican, would be up for re-election. Nixon's conduct of the Vietnam War would be a major campaign issue.

The President objected to the Voting Rights bill but signed it into law. Nixon claimed he favored lowering the voting age but believed that Congress had no power to enact such a measure by simple statute. He said this change required a constitutional amendment.

The Supreme Court's Role. As soon as the law passed, Nixon ordered the Justice Department to bring a court suit to test its constitutionality. It did so in the test case of *Oregon v. Mitchell* (1970). The Supreme Court agreed to hear the case just six months after the Voting Rights bill became law.

In December, 1970 the Court ruled by a 5 to 4 vote that Congress had the constitutional power to lower the voting age for national but not for state and local elections.

Impact of the Decision. The Court's decision caused great problems for the forty-eight states that did not allow 18-year-olds to vote. It meant state election officials would have to prepare two sets of ballots, registration books, and voting machines—one for national elections and one for state elections. State officials warned they could never get a dual system set up in time for the 1972 election.

The Twenty-sixth Amendment

In early 1971, with the election drawing ever closer, Congress again acted. In March of 1971 both houses of Congress approved a proposed constitutional amendment lowering the voting age to 18 in all elections.

The proposed amendment was immediately sent to the states for ratification (approval). Like Congress the states acted in record time so the amendment would take effect for the 1972 presidential election. By July 1, 1971, the required three-fourths of the state legislatures had ratified the amendment. Just three months and seven days after receiving it, the states added the Twenty-sixth Amendment to the Constitution. Chuck Hermann and nearly eleven million other young people had gained the right to vote.

EXERCISES FOR LESSON IV-2

Reviewing the Facts and Main Ideas

1. How did 21 become the minimum voting age in the United States?
2. Why did the voting age become a matter of public debate in the 1960s?
3. What were the terms of the 1970 Voting Rights Act?
4. What position did President Nixon take on the act?
5. Why had Democrats in Congress strongly supported the act?
6. What was the Supreme Court's decision in *Oregon v. Mitchell?*

Interpreting Evidence

Use information in the table in this lesson to answer the following questions:

1. Describe in a short paragraph the **kind** of information displayed in the table.
2. In what year did a majority of Americans first favor lowering the voting age?
3. In which years did a majority of Americans oppose lowering the voting age?
4. What reason might explain the decline in support for lowering the voting age shown in 1946?
5. Would the information in the table support this statement?

   Statement: Support for lowering the voting age has consistently increased since the end of World War II.

   Yes ____ No ____ Give reasons for your answer.

IV-3. A NEW CONSTITUTIONAL CONVENTION: ANOTHER WAY TO AMEND THE CONSTITUTION

LESSON PLAN AND NOTES FOR TEACHERS

Preview of Main Points

This lesson focuses on attempts to call a convention to propose constitutional amendments. A convention is the other, so far unused, method of proposing amendments spelled out in the Constitution. This unused method is explained along with reasons why all attempts (to date) to convene a convention have failed.

Connection to Textbooks

Both government and history textbooks briefly mention the convention method of proposing amendments. This lesson will enrich textbook discussions of formal ways to amend the Constitution.

Objectives

Students are expected to:

1. Identify two recent attempts to call a constitutional convention.
2. Understand why a convention to propose amendments to the Constitution has never been called.
3. Understand how efforts to call a convention may force Congress to propose its own amendment to the Constitution.
4. Increase awareness of the political dynamics associated with efforts to formally amend the Constitution.
5. Practice skills in interpreting evidence from maps, diagrams, and primary source materials.

Suggestions for Teaching the Lesson

This is a case study lesson. It provides an in-depth look at one method of proposing amendments to the Constitution. Use questions at the end of the lesson to help students comprehend and analyze the facts and ideas of the case.

Opening the Lesson

- Inform students about the main point of the lesson.
- Have students refer to the diagram in their textbooks which shows the two methods of proposing and two methods of ratifying amendments. You may use the diagram that accompanies this lesson if you wish. Use the diagram as a transparency and/or distribute copies to students.

  Explain to students that they will study the convention method shown in the diagram. Point out to students that although a convention has never been called, they will learn in this lesson that efforts to call a convention have forced Congress to propose four amendments (the Seventeenth, Twenty-first, Twenty-second, and Twenty-fifth) it might not otherwise have proposed.

Developing the Lesson

- Have students read the case study.
- Ask students to answer the questions about reviewing facts and ideas. You might wish to check student comprehension of the case by conducting a discussion of these questions.
- Move to consideration of the interpreting evidence questions. Conduct a discussion of questions about interpreting evidence.

Concluding the Lesson

- Ask the class whether they believe fears of a "runaway convention" are justified. Conduct a discussion around their responses.

Suggested Reading

Hall, K., H. Hyman, and L. Sigal. eds. *The Constitutional Convention as an Amending Device.* Washington, D.C.: Project '87 of the American Historical Association and the American Political Science Association, 1981. This paperback is an excellent source of information about amending the Constitution. Many ideas in this lesson were derived from Frank Sorauf's chapter, "The Political Potential of an Amending Convention."

IV-3. A NEW CONSTITUTIONAL CONVENTION: ANOTHER WAY TO AMEND THE CONSTITUTION

The Constitution has twenty-six amendments, all proposed by a two-thirds vote of both Houses of Congress.

There is another method of proposing amendments to the Constitution—**a method that has never been used.** Congress, upon request of the states, can call for a special constitutional convention to draw up a proposed amendment.

Article V of the Constitution spells out the rules for amending the Constitution. Article V states Congress "shall call a convention for proposing amendments" whenever two-thirds of the states petititon for one.

This unused method of proposing amendments is known as an "Article V Convention." In recent years heated debates have taken place about whether or not an Article V Convention can or should be called.

In 1979, President Jimmy Carter called an Article V Convention "the worst imaginable route" to amending the Constitution. At the same time the National Taxpayers Union and other special interest groups were pushing state legislatures to petition Congress for just such a convention.

Why the debate? What attempts have been made to convene an Article V Convention? Why have past attempts failed? How might such a convention work if it ever convened? Is one likely? This lesson addresses these questions.

Attempts to Call an Article V Convention

There have been many attempts since 1787 to hold another constitutional convention. Over the years various state legislatures have submitted more than 350 petitions to Congress. Every state in the Union has at one time or another petitioned Congress for an Article V Convention.

Two efforts have come very close to success in recent years. One remains a possibility.

Legislative Redistricting. The first attempt occurred during the 1960s. In 1964, the Supreme Court ruled that state legislators must be elected from districts of equal population. The decision proved very unpopular with members of those state legislatures required to redistrict.

Many members of state legislatures stood to lose their seats through the joining of two or more small districts into one larger district. In many states, the decision caused political power to shift from sparsely populated rural areas to urban and suburban ones. Not surprisingly, state legislatures took an active part in seeking a constitutional amendment to overturn the decision. Thirty-three state legislatures, only one short of the required two-thirds of the states, petitioned Congress for a convention to propose an amendment to overturn the Court's ruling.

In the late 1960s, pressure for an amendment of legislative redistricting let up. Redistricted state legislatures came to represent more accurately the populations of their states. Members of these more representative state legislatures supported redistricting. Many of those who most opposed redistricting no longer served in state legislatures. As a result, the thirty-fourth state legislature, required to make up the necessary two-thirds majority to force a convention, never petitioned Congress to convene an Article V Convention. The campaign to call a convention died.

Balance the Budget. Most recently a campaign to call a convention proposing a constitutional amendment requiring a balanced budget has gained strength. The budget is the federal government's annual plan for spending money. A "balanced" budget means the government plans to spend no more than it takes in through taxes and other revenues. Deficit spending results when the government does not achieve a balanced budget.

With government spending and deficit financing increasing annually, strong "grass roots" support has developed for an amendment to force Congress to balance the national budget each year. Sixty-two percent of the respondents to a 1980 national survey of high school students said they favored a balanced budget amendment. Even larger percentages of adults have favored such an amendment.

By February, 1985 thirty-two state legislatures had approved petitions calling for an Article V Convention to draw up an amendment requiring a balanced budget. The map of the United States (page 200) shows the states that have acted as of this date. If two more states act and if Congress rules all the petitions are valid, Congress could be required to call the first constitutional convention since the Constitution was written in 1787.

Why the Convention Method Has Not Been Used

Why have there been no successful efforts to call an Article V Convention? There seem to be at least four reasons.

Congress Steps In. The first and most important reason is that Congress may step in, take over the amending process, and propose the amendment being requested. In the twentieth century, Congress proposed four amendments to the Constitution after campaigns to call Article V Conventions on each topic had started. Congress proposed the Seventeenth Amendment (direct election of Senators), the Twenty-first Amendment (repeal of prohibition), the Twenty-second Amendment (limits on the President's term of office), and the Twenty-fifth

Amendment (presidential disability) this way.

Indeed, the goal of some campaigns to call an Article V Convention is to force Congress to act. Movements often aim to get Congress to propose its own version of a desired amendment in order to prevent the states from convening a new constitutional convention.

Fear of a Runaway Convention. Why would Congress not want to call a constitutional convention? Both in and out of Congress, fear of a "runaway convention" motivates efforts to prevent a constitutional convention.

Many people fear that once a convention started it would go beyond the subject for which it convened. For example, they argue that a convention to propose a balanced budget amendment might start to tamper with the Bill of Rights, limit the powers of the Supreme Court, or change the powers of Congress. Indeed, some warn that, once in session, an Article V Convention might write an entirely new constitution.

Fears of a runaway convention are not new. In 1789, James Madison wrote that he was against calling a second constitutional convention to draw up a Bill of Rights. Rather, he wanted Congress to propose such amendments. Madison wrote:

> The Congress who will be appointed to execute as well as to amend the Government, will probably be careful not to destroy or endanger it. A convention, on the other hand, meeting in the present ferment of parties, and containing perhaps... [untrustworthy] characters from different parts of America, would at least spread a general alarm, and be too likely to turn everything into confusion and uncertainty.

Indeed, the convention that created our Constitution in 1787 was only supposed to amend the Articles of Confederation. Thus, as political scientist Frank Sorauf points out, our Constitution was itself the product of a "runaway convention" in 1787. He adds, it is ironic that Congress seeks to protect that same document from another runaway convention. However, Sorauf explains: "Congressional fear of the unknown is great. Moreover, the Congress is jealous of its own powers and suspicious of what it cannot control."

Could Congress force an Article V Convention to stick to one specific issue, such as a balanced budget amendment? There is no clear answer. Some constitutional scholars and lawmakers say it could. Others disagree. "It could turn into a circus," claims one lawmaker.

Late-Forming Opposition. A third factor helps explain why calls for a Article V Convention have failed. Organized opposition to such a campaign usually slowly forms, generally only becoming powerful enough to stall a campaign at the last moment. Thus, many campaigns fail after having gained support from nearly two-thirds of the state legislatures.

Convention campaigns have tended to follow a pattern. Proponents of a convention on some issue, such as a balanced budget, usually prove well-organized at the beginning of a campaign. They have money, careful plans, and a corps of volunteers. They get an early jump on the opposition.

However, once the opposition organizes, it can be powerful. It only needs support from one-third plus one of the states to block a convention. The tendency of Congress to align itself with the opposition helps explain that opposition's strength.

As opposition to the campaign for a balanced budget convention has grown, leading members of Congress have become tough with state legislatures. For example, the powerful chairman of the Senate Budget Committee threatened that if state legislatures kept pushing for a convention, Congress might start balancing the budget by cutting the $83 billion a year in grants and revenue sharing it sends to the states.

Inefficiency of a Convention. Finally, conventions have not been called simply because a convention would pose many logistical, political, and even constitutional problems. A convention is probably the least efficient way of changing the Constitution. The Congress and the state legislatures already exist, and it is much simpler and far less costly—in time, energy, and money—to use these existing political bodies to change the Constitution. A convention would face immense problems even before it began. How many delegates would each state send? Should the states all have an equal vote at a convention, as they did in 1787, or should the number of each state's delegates to the convention be determined on the basis of proportioned representation? In 1787 only fifty-five delegates attended the convention. A convention today might consist of as few as 500 and as many as several thousand delegates! Such a meeting could be unwieldly.

In 1787 the delegates acted in absolute secrecy. They believed that open meetings would provoke constant pressure from the public and the press. Could a convention even consider such secrecy today? Would an open convention prove to be a deliberative body, or merely a forum for delegates to gain publicity and personal fame?

Even if a convention met and managed to write an amendment, that amendment would not immediately become part of the Constitution. Three-fourths of the states, either through their legislatures or through special conventions, would still need to ratify the new amendment for it to become a constitutional amendment. Thus, while two-thirds of the states might call a convention, amendments proposed by that convention might still fail to gain the approval of three-quarters of the states. In such a situation, the lengthy and chaotic process of a convention would have led to nothing. Such considerations help explain why no conventions have been called up to now.

An Article V Convention At Work

Should a convention meet, how would it work? No one knows for sure. The few words in Article V of the Constitution explain nothing about procedures for holding a convention.

Congress would decide how a convention should be run. In 1971 and 1973, the Senate passed bills on convention organization, but these bills died in the House. Each state would probably choose as many convention delegates as it has senators and representatives. Yet, excellent constitutional arguments and historical precedents support the view that each state should have an equal vote in the convention. Possibly the people would demand greater representation than they have in Congress. A convention, after all, would be a unique opportunity to represent the wishes and needs of the people. From such a perspective, the greater the number of representatives, the fairer the convention would be.

Congress would probably have to determine how many delegates each state would have, whether each delegate or each state would have one vote, and where and when the convention would meet. Although Congress would probably try to limit the convention to a special topic, it seems likely that once the convention had started, any topic could be discussed or voted on.

Conclusion

Is an Article V Convention likely to meet in the near future? Probably not, but we cannot be sure.

What is certain is that, as long as the mechanism stays in the Constitution, supporters of one cause or another will try to make use of it. Currently, supporters of an amendment to ban abortions have persuaded more than a dozen state legislatures to petition Congress for a convention on the topic. Thus, the possibility of an Article V Convention on one subject or another is likely to enliven American politics for many years to come.

EXERCISES FOR LESSON IV-3

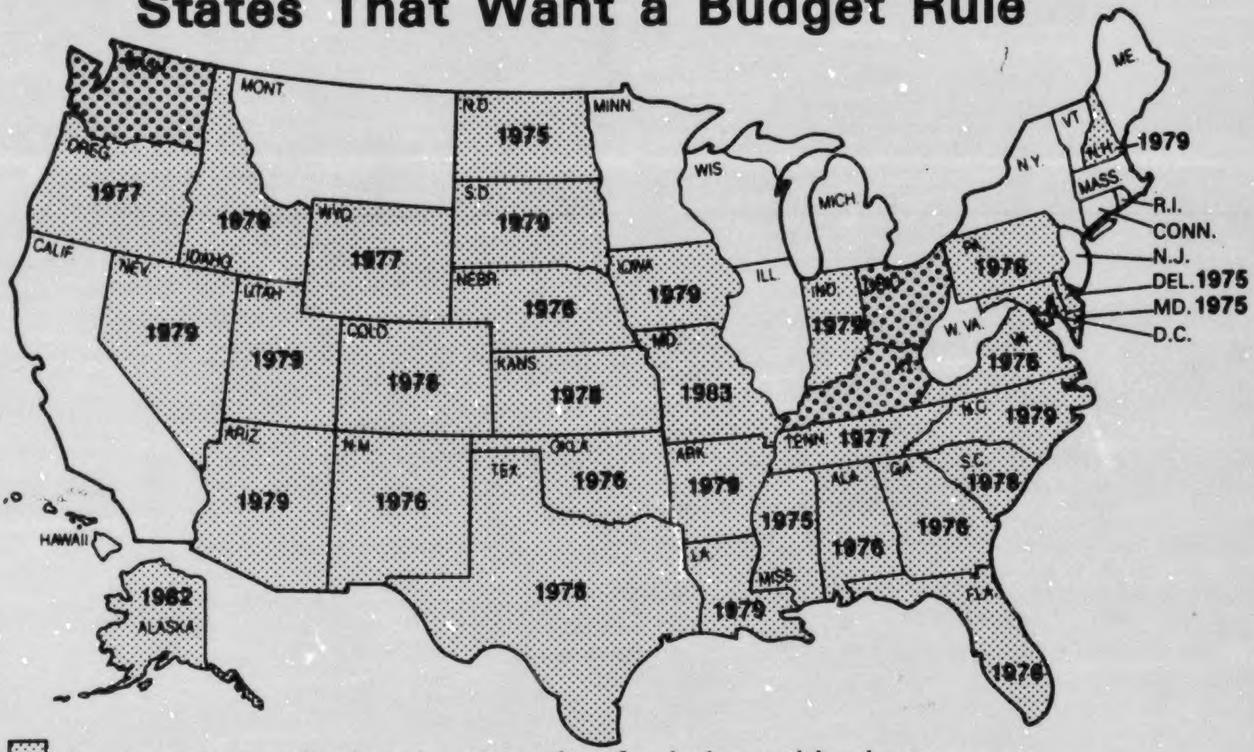
Reviewing the Facts and Ideas

1. How have all twenty-six amendments to the Constitution been proposed?
2. What other method exists for proposing amendments to the Constitution?
3. What are the two ways to ratify amendments to the Constitution?
4. On which two topics did the states almost succeed in calling an Article V Convention?
5. Which four amendments—originally introduced by the Article V Convention method—did Congress eventually propose?
6. Why does Congress fear a "runaway convention"?
7. Why do so many campaigns for an Article V Convention stall at the last minute?
8. Who would set the rules for an Article V Convention should one convene?

Interpreting Evidence

1. Refer to the chart on page 201.
    a. According to Article V of the Constitution, what are four different ways that amendments may be made (proposed and ratified) to the Constitution?
    b. Which two of the four ways have never been used?
    c. Which of the four ways has been used only once?
2. Refer to the map of the United States on page 200.
    a. What is the main idea of this map?
    b. How many states have approved a constitutional convention for a balanced budget amendment?
    c. Which four states seem likely to be the next to approve such an amendment? Why?
    d. Which sections of the country are most in favor of proposing a balanced budget amendment?
3. Refer to James Madison's comments about a convention on page 198.
    a. What is the main idea of this statement?
    b. Would Madison favor an Article V Convention today on a balanced budget or any other topic? Give reasons for your answer.
    c. Do you agree or disagree with Madison's fears about a convention?

States That Want a Budget Rule

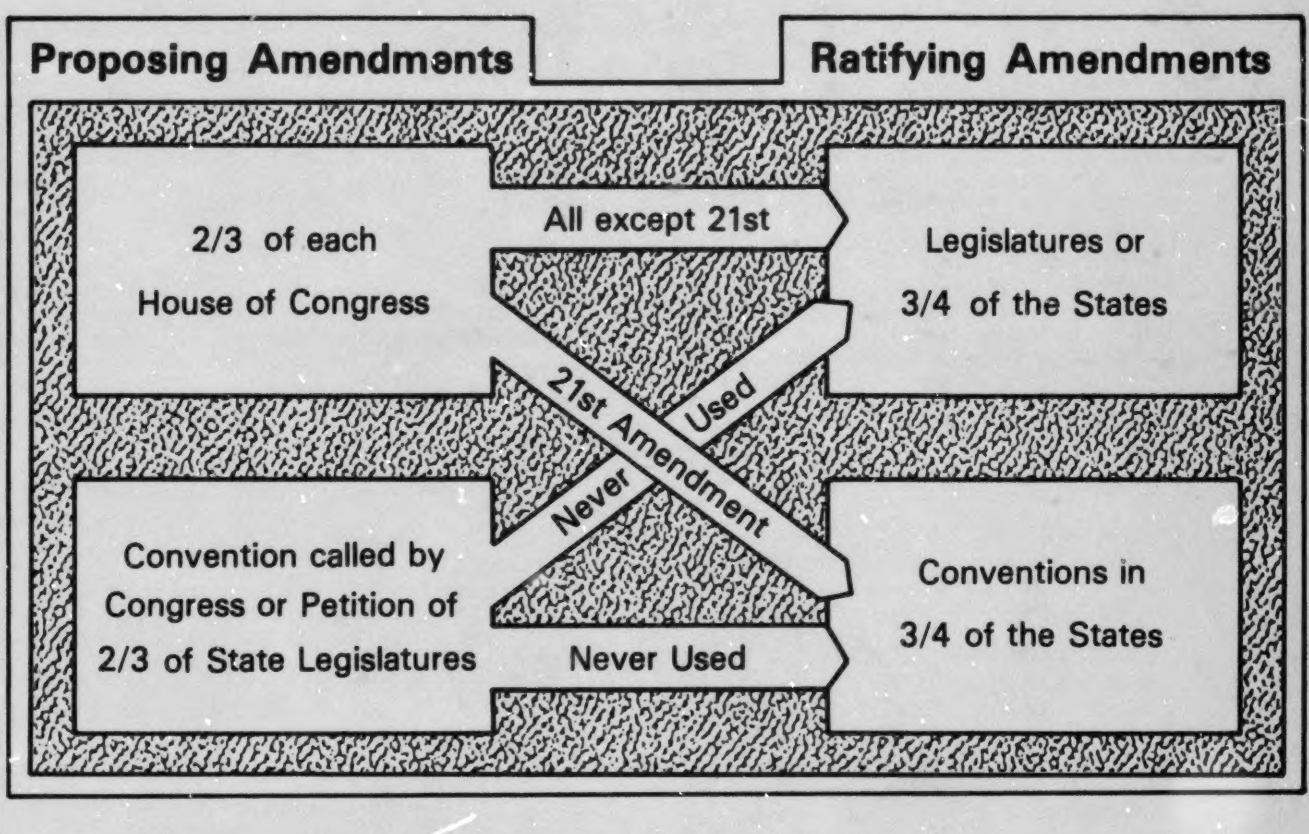

WASH.
MONT.
N.D.
1975
MINN.
ME.
VT.
N.H.
1979
OREG.
1977
1979
WYO.
1977
S.D.
1979
WIS.
MICH.
N.Y.
MASS.
R.I.
CONN.
N.J.
DEL. 1975
MD. 1975
D.C.
CALIF.
NEV.
1979
IDAHO
UTAH
1979
COLO.
1976
NEBR.
1976
IOWA
1979
ILL.
IND.
1979
OHIO
PA.
1976
W. VA.
VA.
1976
KY.
KANS.
1978
MO.
1983
N.C.
1979
TENN.
1977
ARIZ.
1979
N.M.
1976
OKLA.
1976
TEX.
1978
ARK.
1979
1975
MISS.
ALA.
1976
GA.
1976
S.C.
1976
LA.
1979
FLA.
1976
HAWAII
1982
ALASKA

▨ Approved constitutional convention for balanced budget

▩ One house of legislature has approved convention

The information on this map shows the situation as of February 1985.

Methods of Amending the Constitution


Proposing Amendments
Ratifying Amendments
2/3 of each House of Congress
All except 21st
Legislatures or 3/4 of the States
21st Amendment
Never Used
Convention called by Congress or Petition of 2/3 of State Legislatures
Never Used
Conventions in 3/4 of the States

IV-4. THE ORIGIN OF POLITICAL PARTIES

LESSON PLAN AND NOTES FOR TEACHERS

Preview of Main Points

This lesson describes the creation within Congress of our first two political parties—the Federalists and the Republicans—during the years 1790-1800. The pivotal roles of Thomas Jefferson, James Madison, and Alexander Hamilton in starting the parties are featured. The political viewpoints associated with each party are presented along with the tabular information about their strength within early Congresses. The development of political parties is presented as an example of the informal ways in which constitutional change may occur.

Connection to Textbooks

History, civics, and government textbooks briefly mention the development of the first political parties. This lesson explains in detail how and why parties developed. It could supplement civics and government textbook materials on informal means of constitutional change or the development of political parties. The lesson could enrich history text discussions of the Washington administration and the operations of the newly formed national government.

Objectives

Students are expected to:

1. Explain why the "Founding Fathers" were suspicious of "factions" or political parties.
2. Explain the role of Alexander Hamilton, Thomas Jefferson, and James Madison in the development of political parties.
3. Identify key political issues which divided lawmakers in the early Congress.
4. Explain the significance of the national bank issue in the development of political parties.
5. Identify the politicial beliefs associated with the Federalist and the Republican parties.
6. Tell how the first parties developed within Congress and then spread outward in search of popular support among the voters.
7. Explain why the development of political parties illustrates the informal development of the Constitution.

Suggestions for Teaching the Lesson

This lesson can be used as an "in-depth" case study of the creation of our first two political parties and the informal means through which our constitutional system has developed. After reading textbook materials on the Washington administration or informal means of constitutional change, students can turn to this case study for more details. The lesson can be used to introduce government textbook material on the origins of our two-party system.

Opening the Lesson

- Inform students that a leading political scientist once said: "Political parties created democracy and. . . modern democracy is unthinkable save in terms of the parties." Ask students how they think political parties contribute to democracy. Some possible answers include:
  - They stimulate interest in parties.
  - They provide people with information about complex public issues.
  - They recruit candidates for public office.
  - They take the responsibility for running government and provide a loyal opposition to those in power.
- Ask students how our political party system got started. Where did the practices come from? Were they called for in the Constitution?
- Inform students that this lesson will deal with such questions. Preview the main points of the lesson for students. You might also explain how this lesson is connected to the material they have been studying in the textbook.

Developing the Lesson

- Have students read the case study. Then conduct a discussion of the review questions at the end of the lesson. Make certain that students have understood the main ideas of the lesson.
- NOTE: The last section of the case-study, "Aftermath," briefly recounts the subsequent history of the first two parties. Some textbooks have an illustration which shows the evolution of these parties into today's two major parties. You may want to refer students to that chart or to the table provided with this lesson, "American Political Parties Since 1789," to see the total picture of party evolution in the United States.
- Have students examine table 1. Use the "interpreting evidence" questions to guide student use of these data.

Concluding the Lesson

Remind students that Washington sought to stay "above politics" and was disappointed with the development of political parties. Yet Washington fairly consistently supported Hamilton's (i.e., Federalist) policies. And in 1795, when discussing cabinet appointments, the President declared:

> I shall not, whilst I have the honor to administer the government, bring any man into any office of consequence knowingly whose political tenets [beliefs] are adverse to the measures which the general government are pursuing; for this, in my opinion, would be a sort of political suicide.

Ask students: Why would Washington make such a statement? Does the statement indicate that Washington himself was acting like a political party leader?

IV-4. THE ORIGIN OF POLITICAL PARTIES

Our written constitution spells out the basic plan for government in the United States. Yet some very important features of our political system are not mentioned in the Constitution. These features have evolved informally as we have gone about the day-to-day business of governing ourselves. This is one way our constitutional system has changed to keep up with the times.

Our political party system is a good example of such informal change. The Constitution does not mention political parties. Yet, you cannot fully understand American politics without knowing how our two-party system works.

Take Congress, for example. Both the House and Senate are organized around the two major parties. In both chambers, desks are arranged so Democrats sit on one side of the hall, Republicans on the other. Key congressional leaders are chosen by members of their own party. The top jobs, such as Speaker of the House, go to members of the majority party. When all is said and done, a lawmaker's party affiliation (Republican or Democrat) is the best indicator of how he or she will vote on bills.

In this lesson you will learn how political parties first formed in the United States. You will also learn what our first parties stood for and what eventually happened to them.

The Founders and Political Parties

The men who wrote the Constitution disliked political parties or "factions" as they called them. They could not foresee that political parties would prove invaluable to a large democracy to inform voters on issues and give them a choice of policies. In the Founders' experience, factions had always operated as small groups of politicians working together to promote their narrow, special interests.

The Founders worried that political parties in the new nation would simply become bigger and fiercer factions. They feared that the effects of parties would ruin the national unity needed to ensure the new government's survival. Benjamin Franklin, for example, warned of the "infinite mutual abuse of parties, tearing to pieces the best of characters."

Given such concerns, the Founders tried to design the new constitution to delegate power so widely that no one faction could control the government. By assigning separate powers to separate branches and by giving each branch ways to check the others, they sought to prevent what Madison called the "mischiefs of faction."

Ironically, some of the very men who expressed such concern about parties later became deeply involved in creating our first two political parties. Our two-party system evolved in the early 1790s as the new nation's first political leaders began to wrestle with practical policy problems during President Washington's administration.

Practical Issues Set the Stage for Parties

On April 30, 1979, George Washington took the oath of office as President. The new government began to govern.

Supporters of the Constitution filled the first Congress. James Madison, known to history as the "Father of the Constitution," was among them. In the executive branch, Washington named Alexander Hamilton Secretary of the Treasury. Thomas Jefferson, newly returned from Europe where he had served as Ambassador to France, became the first Secretary of State. John Adams had recently returned from England, where he had held the post of ambassador, to preside over the Senate as the elected Vice President.

The recent ratification contest over the new constitution remained fresh in everyone's mind. Yet the Constitution itself quickly ceased to be a subject of political controversy. By the time Congress met for its second session in 1790 politicians had stopped arguing over whether the new Constitution was good; they agreed it was. Instead, their attentions focused on tough policy problems facing the new government.

Some Key Issues. A number of important questions faced the Congress: how should the national government settle the nation's war debt and strengthen its economy? What stance should the nation take towards England and France? How centralized and powerful should Congress make the new national government?

Two rival groups began to emerge within Congress as lawmakers took different positions on such issues. On one side stood lawmakers who generally favored a strong national government, economic politics that benefited northeastern commercial interests, and a pro-British foreign policy. These men generally opposed the addition of a Bill of Rights to the Constitution. They found the ideas and politics of Alexander Hamilton attractive.

On the other side stood lawmakers aligned who preferred a weaker national government; economic policies that favored the lower classes, debtors, and farmers; and pro-French policies in diplomacy. These men vigorously supported the addition of the Bill of Rights to the Constitution. They united around the leadership of Thomas Jefferson and James Madison.

Thus, as early as 1790 the conditions for the development of political parties existed within Congress. The Washington administration's plan to create a national bank proved the key event which sparked the actual formation of two parties, the Federalists (led by Hamilton) and the Republicans (led by Madison and Jefferson).

A Conflict Over Economic Policy

President Washington wanted to stay "above politics" during his two terms in office. He left it to the bright and ambitious Alexander Hamilton to push the Administration's economic policies through Congress. To further this aim, Hamilton began building a coalition of small factions of lawmakers with similar interests. In other words, Hamilton started to build our nation's first political party.

In December, 1790 Hamilton submitted to Congress a plan for the creation of a national bank. The bank would store government money, help collect and spend tax money, and issue bank notes which could be used as money. Its advocates designed the bank plan to strengthen the national government. In addition, members of Congress recognized that the bank would benefit northern business groups and wealthy citizens. Most of all, the bank would benefit its stockholders. Although the bank had a federal charter and would be called the Bank of the United States, it was in fact to be a privately owned company.

During the congressional debate on the bank bill, Hamilton frequently called his supporters in the House and the Senate together before legislative sessions to plan strategies. The bank bill sailed through the Senate.

Both Madison and Jefferson vigorously opposed Hamilton's economic policies. With Jefferson's encouragement, Madison organized opposition to the bank bill in the House. Hamilton, however, had the votes and the House passed the bill.

President Washington faced a decision. Should he veto the bank bill or should he support Hamilton and sign the bill? Both Hamilton and Jefferson prepared long memos for the President, each arguing for his own view on the bank. On February 25, 1791 to the dismay of Jefferson and Madison, Washington signed the bank bill. Hamilton's arguments had persuaded the President that the young nation's welfare required not only a national bank but also an interpretation of the Constitution that expanded the national government's powers.

Reaction to the Bank Issue

Washington's decision stung Jefferson and Madison. They believed Hamilton was pursuing policies that served to aid northern commercial interests at the expense of the nation as a whole. They also thought Hamilton was subverting the Constitution itself by trying to expand the national government's authority beyond the constitutional limits.

The Republican Party. Followers of Jefferson and Madison in Congress now rallied around these leaders in open opposition to Hamilton and his supporters. They began calling themselves "Republicans," hoping to suggest that their opponents secretly favored a monarchy.

These Republican lawmakers favored a "grass roots" philosophy which reflected a fear of rule by bankers and commercial interests, a dislike of big, expensive government, and a belief in the virtue of working the land. At the same time, some wealthy Southern planters adopted Republican ideas for very practical reasons: they feared a strong national government might interfere with slavery.

The Federalist Party. Hamilton's followers in Congress took the label "Federalist." The term had once applied to all supporters of the Constitution. In calling themselves Federalists they aimed to imply that their opponents were "anti-Federalists" or opponents of the now widely popular Constitution.

Hamilton and his followers considered that Jefferson and the Republicans were not only resisting Hamilton's economic policies but also opposing the very idea of a national government. Federalist lawmakers believed in subordinating local interests to what they saw as the interest of the nation as a whole.

The Federalists, led by Hamilton, believed deeply in strong government. They thought the real danger to freedom did not come from big government but from the popular passions of the people themselves. They favored a limited government with enough power to protect property owners and wealthy citizens from the excesses of the common people.

A Public Quarrel. By 1792 both Jefferson and Hamilton had publicly aimed their disagreements and criticisms at one another. Each used newspapers published by their respective political parties to attack the ideas of the other. At the very time both were helping to build political parties, each accused the other of committing the worst crime they could imagine—promoting factionalism.

Jefferson charged that Hamilton's efforts to promote his economic policies served "as a machine for the corruption of the legislature." He added that:

> It must be acknowledged that his machine was not without effect. That even in this, the birth of our government, some members were found sordid enough to bend their duty to their interests, and to look after personal, rather than public good.

Hamilton wrote Washington in September 1792, to give his report on the struggle. He complained bitterly of Jefferson's efforts to build a political party.

> I know that I have been an object of uniform opposition from Mr. Jefferson...I know from the

> most authentic sources that I have been the frequent subject of the most unkind whispers and insinuations from the same quarter. I have long seen a party formed in the Legislature under his auspices, bent upon my subversion.

President Washington was dismayed by these developments but he could do little about them. When he retired from the presidency in 1797, he devoted much of his farewell address to condemning parties. He said:

> Let me warn you in the most solemn manner against the baneful effects of party generally. . . [the party spirit] agitates the community with ill-founded jealousies and false alarms, kindles the animosity of one part against another, foments [causes] occasional riots and insurrection.

The Parties In Congress. By the mid-1790s the two rival parties had firmly established themselves in Congress. Most lawmakers in both chambers had joined one of two voting groups: the Federalists and the Republicans, or Democratic-Republicans as they were sometimes called.

In the early stages of the battle between the two parties, the Federalists held several advantages: better organization, more government experience, and control of federal offices. In the Senate, the Federalists regularly enjoyed a majority. However, the House of Representatives was more evenly divided between Federalists and Republicans.

By 1793 political observers were comparing the two parties in Congress to Prussian military units, each maneuvering and voting like soldiers obeying their officers. At one point Jefferson complained that the Federalists were better organized than the Republicans, noting that they voted with the precision of a "squadron." Federalists often voiced similar complaints about their rivals. Such competition stimulated the growth of even more party spirit among the lawmakers.

Popular Support. Unlike today's two major political parties, the first parties did not enjoy broad-based popular support among the voters. Rather, our two-party system emerged from a struggle within Congress between lawmakers with different ideas about government and differing perceptions of the key issues facing the new nation. In basic disagreement about the role of government, the two cabinet officers, Hamilton and Jefferson, stood above the lawmakers.

The idea of "political party" spread outward from Congress only as each party sought to build popular support for its programs and candidates among the voters. By the late 1790s our first two parties were just beginning to develop the characteristics we associate with today's political parties: catchy slogans, techniques for getting out the vote, local organization in cities and counties, and support of large numbers of average citizens.

Yet the genie was out of the bottle. Hamilton, Adams, Jefferson, Madison, and their associates had created a new political institution that would become an important part of our constitutional system. In so doing they had added to the meaning of the Constitution without ever changing a word in the document.

Aftermath

What happened to the original two parties? The Democratic-Republicans eventually evolved into the contemporary Democratic party, the oldest continuously-functioning political party in the world. Jefferson's election to the Presidency in 1800 inaugurated a period of Democratic-Republican dominance in Congress (see table 1).

The Federalists were not so fortunate. Unable to compete with the rising Democratic-Republicans, they elected their last President, John Adams, in 1796. By the early 1800s they only enjoyed the support of a small and shrunken New England base. After 1816 they no longer nominated presidential candidates.

EXERCISES FOR LESSON IV-4

Reviewing Main Ideas and Facts

1. True or False? (Be prepared to explain your choices.)

   a. The Founders designed the Constitution to encourage political parties.
   TRUE FALSE

   b. James Madison served as Washington's Secretary of the Treasury.
   TRUE FALSE

   c. Alexander Hamilton submitted a plan for a national bank to Congress.
   TRUE FALSE

   d. Supporters of Thomas Jefferson called themselves "Republicans."
   TRUE FALSE

   e. From the beginning the Republicans dominated both houses of Congress.
   TRUE FALSE

2. What did the Founder's mean by "Factions"?
3. Why did the Founders dislike political parties?
4. What positions did Thomas Jefferson and Alexander Hamilton hold in Washington's administration?
5. What issues divided lawmakers in the early Congress?
6. Why did Hamilton begin to form a political party in Congress?
7. Why did Washington support Hamilton's plan to establish a national bank?
8. What political beliefs did the Federalists share?
9. What political beliefs did the Republicans share?
10. How did the first two political parties differ from today's political parties?

Interpreting Evidence

Use the information in table 1 to answer the following questions:

1. Describe the **kind** of information displayed in table 1 in a short paragraph.
2. Which party enjoyed majority in the Senate from 1790 to 1801?
3. Who was the last Federalist President? What years did he serve?
4. Which party dominated Congress after President John Adams' term of office?
5. What can you infer from the table about public support for the Federalists?

TABLE 1

Political Party Strength in Congress

(F = Federalists; DR = Democratic-Republicans)

Congress	Year	President	Senate		House	
			Majority Party	Principal Minority Party	Majority Party	Principal Minority Party
1	1789-91	Washington	———no political parties yet———			
2	1791-93	Washington	F 16	DR 13	F 37	DR 33
3	1793-95	F Washington	F 17	DR 13	DR 57	F 48
4	1795-97	F Washington	F 19	DR 13	F 54	DR 52
5	1797-99	F Adams	F 20	DR 12	F 58	DR 48
6	1799-01	F Adams	F 19	DR 13	F 64	DR 42
7	1801-03	DR Jefferson	DR 18	F 14	DR 69	F 36
8	1803-05	DR Jefferson	DR 25	F 9	DR 102	F 39
9	1805-07	DR Jefferson	DR 27	F 7	DR 116	F 25
10	1807-09	DR Jefferson	DR 28	F 6	DR 118	F 24
11	1809-11	DR Madison	DR 28	F 6	DR 94	F 48
12	1811-13	DR Madison	DR 30	F 6	DR 108	F 36
13	1813-15	DR Madison	DR 27	F 9	DR 112	F 68
14	1815-17	DR Madison	DR 25	F 11	DR 117	F 65
15	1817-19	DR Monroe	DR 34	F 10	DR 141	F 42
16	1819-21	DR Monroe	DR 35	F 7	DR 156	F 27
17	1821-23	DR Monroe	DR 44	F 4	DR 158	F 25
18	1823-25	DR Monroe	DR 44	F 4	DR 187	F 26

Source: Richard B. Morris, ed. and Jeffrey B. Morris, assoc. ed., *Encyclopedia of American History,* 6th ed. (New York: Harper & Row, 1982), 1211-12.

IV-5. THE WHISKEY REBELLION: A TEST OF FEDERAL POWER

LESSON PLAN AND NOTES FOR TEACHERS

Preview of Main Points

In this lesson, students review in some detail the circumstances and events of the Whiskey Rebellion of 1794. While a careful chronological account is presented, the focus is on President Washington's decision whether or not to intervene with force, a decision to be based on the arguments outlined in this account. The point is made that the principle of federal supremacy was a basic source of conflict in the new nation.

Connection to Textbooks

Many standard texts do mention the Whiskey Rebellion and some of them identify federal supremacy as the principle issue. Unfortunately, treatment of this historical event is brief and superficial. This lesson improves textbook accounts by placing the Rebellion in a decision-making context. Viewing real political actors engaged in decision-making spotlights the human side of history. Student interest is stimulated by the drama that human dilemmas generate. The opposing viewpoints expressed in the aftermath of the Rebellion remind the student of the ongoing philosophical conflict between Thomas Jefferson and Alexander Hamilton.

Objectives

Students are expected to:

1. Explain the economic circumstances leading to imposition of the whiskey tax.
2. Describe the reasons for opposition among whiskey distillers of western Pennsylvania.
3. Enumerate the opposing arguments Washington weighed in arriving at his decision to use force.
4. Make judgments about the President's characterization of farmers' actions based on documentary evidence.
5. Identify links between events of the Rebellion and constitutional principles through documentary analysis.
6. Analyze Washington's decision in terms of the decision tree.
7. Make defensible judgments about Washington's decision.

Suggestions for Teaching the Lesson

The lesson is conceived of as an opportunity for in-depth study. Where textbook readings refer to the Rebellion, you can refer to that assignment as a lead-in to this case study. If your text omits this episode, any textual discussion of Washington's first term would be an appropriate starting place.

Opening the Lesson

- Begin the lesson by asking students to answer these questions: (1) What might happen to a government that proclaims laws, but does not strictly enforce them? (2) When, if ever, should the head of a government decide not to enforce a law?
- Use discussion of the preceding questions to introduce the case study about President Washington's decision to put down the Whiskey Rebellion. Indicate that the President was faced with a decision in 1794 about whether or not to enforce an unpopular federal law.

Developing the Lesson

- Ask students to read the case study about Washington and the Whiskey Rebellion.
- Conduct a discussion of the questions following the heading "Reviewing Facts and Main Ideas." Make sure that students understand the main ideas about the origins and resolutions of this critical situation. Emphasize that Washington's decision upheld an important constitutional principle—the supremacy of the Constitution and federal law within the federal system of government.
- Extended excerpts from Washington's proclamation are provided as an additional resource for students. You might first have students check to see that the narrative account of events in the case study coincides with the account given by the President. Are there details in the Proclamation **not** provided in the narrative?
- The student might next find the particular constitutional passages referred to in the "Analyzing a Document" section and assess how well the proclamation is grounded in the Constitution. It is apparent, as well, that Washington laid out his justification for action very carefully in this document; you might have students assess the document's detail and the President's reasons for being so meticulous, particularly with respect to Congress' role in resolving the Rebellion.
- Use the questions under the heading "Analyzing a Document" to conduct a discussion of main ideas in Washington's "Proclamation."

Concluding the Lesson

- Use the decision tree to analyze the President's decision-making moves.
- Have students use the questions under the heading "Decision-Making Skills" to guide their analysis of Washington's decision.
- Conduct a class discussion about Washington's decision. Discuss what would have happened to the government and the Constitution if Washington had made some other decision.
- Have students make judgments about Washington's decision.
- Conclude the lesson by presenting the following ideas to students.

  The Whiskey Rebellion is not only linked to the past in Shays' Rebellion (see Lesson II-5), but may be linked as well to critical events in the decades to follow. The supremacy of federal law was challenged again by South Carolina's 1832 Ordinance of Nullification, declaring void the tariff acts of 1828 and 1832. This time, the threat of secession was attached to any use of federal force.

About 65 years after the Whiskey Rebellion, and one day after Ft. Sumter surrended, President Lincoln issued a proclamation whose wording is remarkably similar to Washington's. (See the excerpt below.) Federal supremacy was again challenged by a rebellion, but the circumstances were considerably more complex and the problems more intractable. The consequences of Lincoln's decision were a good deal different from those of his predecessor, three score and seven years earlier. They were associated with the beginning of the tragic Civil War.

BY THE PRESIDENT OF THE UNITED STATES

A PROCLAMATION

Whereas the laws of the United States have been for some time past and now are opposed and the execution thereof obstructed in the States of South Carolina, Georgia, Alabama, Florida, Mississippi, Louisiana, and Texas by combinations too powerful to be suppressed by the ordinary course of judicial proceedings or by the powers vested in the marshals by law:

Now, therefore, I Abraham Lincoln, President of the United States, in virtue of the power in me vested by the Constitution and the laws, have thought fit to call forth, and hereby do call forth, the militia of the several states of the Union to the aggregate number of 75,000, in order to suppress said combinations and to cause the laws to be duly executed. . . .

Done at the city of Washington, this 15th day of April, A.D. 1861, and of the Independence of the United States the eighty-fifth.

Abraham Lincoln

Suggested Reading

Flexner, James Thomas. *Washington: The Indispensable Man.* New York: The New American Library, A Mentor Book, 1974, 315-323.

Morris, Richard B. *Great Presidential Decisions: State Papers That Changed the Course of History.* New York: Harper & Row, Publishers, Perennial Library, 1973, 21-27.

IV-5. THE WHISKEY REBELLION: A TEST OF FEDERAL POWER

In the eighteen years after declaring independence, the United States could be proud of two great achievements. It had won freedom from Britain and had created a marvelous system of government, unlike any other. But 1794 brought troubles that threatened to undo these hard-won gains. Money was the root of the problem.

The new federal government had huge debts. Millions of dollars had been borrowed from private citizens and foreign governments. State governments had also borrowed from citizens. The new national government decided to take on all these debts, including those of the states; the total was about $80 million. In the 1790s, that was an almost unbelievable amount of money. Someone had to come up with a plan to pay back that money and keep the government from going bankrupt. That task fell to Alexander Hamilton, our first Secretary of the Treasury and an advisor to President Washington.

An Excise

An excise (tax) was one part of Hamilton's overall plan to pay our debts. An excise is an internal tax on the manufacture, sale, or consumption of a commodity within a country.

Hamilton realized that excises were unpopular. Britain's attempt to lay an excise (the Stamp Act of 1765) was repealed in the face of united colonial opposition. Yet Hamilton found other alternatives for raising money unappealing. If taxes were raised on property, the wealthy Easterners would complain. Without the support and commitment of America's wealthy class, Hamilton did not see how the nation would survive economically. If he raised tariffs (taxes on imports), smuggling would be encouraged and trade with foreign countries would slow down; this would also hurt America's industries, as well as its merchants. So Hamilton persuaded Congress to pass the Excise Act in March of 1791. Both Republicans and Federalists voted for the law. It established a tax on stills and distilled liquor.

Farmers React to the Excise

The Farmer's Situation. Beyond the Appalachian Mountains was a frontier settled by farmers who grew many crops, including grains. Whatever extra grain they would harvest could buy other necessities of frontier life. Transportation was a real problem, though. It was too expensive to ship bulky grain by mule over the mountains and to the east; the Mississippi River, held by Spain, was closed to Americans. So the only answer was to use the grain to distill whiskey. Grain as whiskey was much more portable, and many western farmers maintained stills. The liquor became a kind of currency of its own when traded for axes and fabric and the like.

In western Pennsylvania, the Excise Act of 1791 hit the farmers of Washington County like a lightning bolt. It affected their only exportable product, and the duties were oppressively high—about 25 percent of the farmer's already small profits from the sale of the liquor. Moreover, cash with which to pay the tax was in short supply in the West, where whiskey, tobacco, and other products often circulated as currency. The farmers of Washington County, Pennsylvania, decided to defy the law. They would not pay the Whiskey Tax!

The Whiskey Rebellion Begins. In September of 1791, representatives of the farmers met in Pittsburgh to draft a protest to be sent to the President. Lacking agreement on a course of action, the meeting adjourned, but the protest grew. Local leaders in western Pennsylvania vowed to obstruct the operation of the law and outbreaks of violence and rioting took place in Pennsylvania and elsewhere. In response, President Washington issued a proclamation announcing the federal government's intention to enforce the law, but no official addressed the fundamental grievance of the farmers—that the United States was taxing their only cash product and apparently giving them nothing in return. For three years farmers refused to pay the tax and regularly sent petitions and protests, which were ignored. President Washington was deeply troubled by this defiance of federal law, but he was also reluctant to use force to compel the farmers pay the tax.

In July of 1794, John Neville (excise inspector for Washington County) and David Lenox (a federal marshal) tried to serve a summons ordering a farmer to appear in federal court in Philadelphia. At that moment, a group of armed farmers arrived, forcing a hasty retreat by these federal officials. Followed to his estate by the farmers, Neville found himself under seige. About one hundred farmers assaulted Neville's home. He defended the premises himself on the first day, but on the second, the number of assailants had grown to five hundred, and about a dozen militia arrived to help Neville, who escaped. The militia tried to defend the house, but in the end, they were overpowered by the farmer-distillers, who set fire to the barn, outbuildings, fences, and, finally, the house itself. One farmer, James McFarlane, was killed, and a number of men on each side were wounded. David Lenox was held captive for a while.

By August 2, 1794, five thousand whiskey-makers were assembled outside of Pittsburgh, led by David Bradford, a lawyer. Throughout the month, meetings took place in western Pennsylvania protesting the excise. The majority of the people in the region supported the farmer-distillers. Alexander Hamilton, who had advocated the use of force in 1792, now urged the President to suppress the protest by leading an army against the demonstrators.

The Federal Government Responds to the Whiskey Rebellion

Repeal or Enforce the Law? The Constitution and all laws made according to the Constitution were supposed to be "the supreme law of the land" (Article VI, paragraph 2). That principle was being challenged. The federal government had to exercise its constitutional duty to enforce the law. If it did not, it would appear to be as weak as the government under the Articles of Confederation. Hamilton urged the President to act quickly. He feared that if the President did not see that the law was enforced, the whole foundation of the national government would be undermined. He may even have looked forward to the conflict as a test of the authority of the federal government over the states. If strong action were taken, the supremacy of the federal law and of the central government would be demonstrated, and the incipient rebellion in the West would be quelled. The only alternative would be to repeal the law; the government could not afford to have a law on the books that it could not enforce.

The President's Predicament. President Washington agreed with Alexander Hamilton that it was necessary to enforce the nation's laws. However, many considerations made speedy action difficult.

First, he feared that using troops against the western farmers would meet with a very unfavorable reaction from the public. Alexander Hamilton had many opponents, Thomas Jefferson among them, who claimed that Hamilton's heavy-handed approach showed his bias against the farmers in favor of urban, wealthy Easterners. Hamilton never really believed that common people could govern themselves. What he really wanted, they claimed, was to create an American monarchy. If the President followed Hamilton's advice, people would say that King George III had just been replaced by King George Washington. What would foreign countries think about us then? Therefore, Washington did not want to use force until public opinion supported his doing so.

Second, many public officials opposed using force, including the governor of Pennsylvania, Thomas Mifflin. Article IV, Section 4, of the Constitution states: "The United States shall guarantee to every state in this Union a republican form of government, and shall protect each of them against invasion; **and on application of the legislature, or of the executive (when the legislature cannot be convened) against domestic violence** (emphasis added). The governor of Pennsylvania had not convened the legislature to ask, nor had he himself asked, for federal assistance in dealing with the tax resistors. But Mifflin was a Republican, and Hamilton believed that the governor wanted to see the Federalists who were in national office embarrassed.

The President had another option: Article I, Section 8, Paragraph 15, of the Constitution allowed Congress "To provide for calling forth the militia to execute the laws of the Union, suppress insurrections and repel invasions," and Congress had passed the Militia Act of 1792 to implement this section. However, the act required that a federal judge certify that the court system was not functioning adequately before the President could nationalize the militia. Washington could not provide that evidence.

Finally, what would happen if the government lost in a battle against the rebels? The federal government and the Constitution might be discredited.

The President's Decision. Washington realized that the federal government could not move troops into Pennsylvania without the support of the state's government. Therefore, he arranged a meeting with Pennsylvania's governor and other state officials. The participants came to agreement that the federal government would delay military action until state officials could negotiate with the rebels.

On August 4, Supreme Court Justice James Wilson, a political ally of President Washington, certified that the situation in Pennsylvania warranted nationalizing the militia. In the next two days, Washington put out a preliminary call to the militia and appointed a federal commission to negotiate with the rebels. On August 7, he also issued a proclamation ordering rebellious citizens to end their "treasonable acts" and announcing his intention to mobilize the militia. (See the document on page 212.)

The commissioners appointed by Washington (which included two Pennsylvania state officials) left immediately for western Pennsylvania. Although they had authority to grant amnesty and to forgive unpaid taxes, the information they obtained led them to believe radicals controlled the farmers and were threatening violence and intimidation. Their reports convinced Hamilton and Washington to mobilize.

On September 9, the President ordered the militia to assemble to put down what he now saw as a real rebellion. Governor Mifflin of Pennsylvania cooperated fully with the President. Public opinion was now enthusiastically behind the President's actions. When 12,800 men had been assembled from four states, a larger force than he had ever commanded in the Revolution, Washington placed them under the command of General "Light-Horse

Harry" Lee (father of Robert E. Lee, Confederate general during the Civil War).

The President accompanied his troops westward to Bedford, Pennsylvania, before returning to Philadelphia. This was the only time in American history that a President, as commander-in-chief, has ever taken the field with his army. Alexander Hamilton, in uniform, also rode with the troops. To their surprise, however, they were met with no resistance. No battles were fought. Leaders of this "rebellion" had vanished across the Ohio River, and only a handful of prisoners were taken. In the end, General Lee offered amnesty to all but fifty-one men; of these, only two were convicted of treason, and they were both pardoned by President Washington.

The Results: The Supremacy of Federal Law is Affirmed

Some Americans still objected to Washington's decision. Thomas Jefferson denounced the government's use of force against this so-called rebellion. His sympathies had always been with the farmers. He feared the power of wealthy city dwellers. He also believed that the new federal government (if too strong) would abuse its power. Not surprisingly then, Jefferson claimed that "an insurrection was announced and proclaimed and armed against, but could never be found." But Hamilton pointed to the danger of under-estimating civil disorder:

> Beware of magnifying a riot into an insurrection by employing in the first instance an inadequate force. 'Tis better far to err on the other side. Whenever, the government appears in arms, it ought appear like a **Hercules,** and inspire respect by the display of strength. The consideration of expense is of no moment compared with the advantages of energy.

As the years passed, the conditions leading to the Whiskey Rebellion disappeared. The Mississippi River was opened to Americans in 1795 (Pinckney's Treaty), so farmers could now ship grain and did not have to convert it to whiskey. A victory by U.S. troops over the native Americans which resulted in the Treaty of Greenville (also 1795), made the frontier safer and persuaded Western farmers that the national government did take their concerns seriously. The Excise Act was repealed when Thomas Jefferson became President. What did not disappear, though, was a key principle of our Constitution—the supremacy of the Constitution and federal laws made under it.

The principle of federal supremacy had been upheld in the Whiskey Rebellion. It showed that the federal government could enforce laws passed by Congress, even to the point of bringing troops under federal command into the state or states where the law was being ignored. As history records, though, there would be more challenges to federal supremacy as our nation grew through the 1800s.

EXERCISES FOR LESSON IV-5

Reviewing Facts and Main Ideas

1. Why did Alexander Hamilton believe an excise was necessary?
2. For what reasons were the farmers of western Pennsylvania opposed to the whiskey tax?
3. When farmers refused to obey the law, how did Hamilton think the national government should respond? Why?
4. What did Thomas Jefferson think about the use of force by the national government? Why?
5. For what reasons was President Washington reluctant to use force against the "rebels"?
6. How was the Whiskey Rebellion finally ended?
7. What important constitutional principle was supported by Washington's decision to put down the Whiskey Rebellion?

Analyzing a Document

Examine the document, page 212. Use the information in the document to help you answer the following questions.

1. Washington claimed that the "rebellious" farmers of western Pennsylvania were committing acts of treason.
   a. How does he support that claim in his proclamation? (Check Article III, Section 3 in the Constitution to find the definition of treason.)
   b. Do you think Washington is justified in applying the term "treason" to the events of July 16 and 17? Why or why not?
2. How do we know that Congress must not have been in session on August 7, 1794?
3. Every law passed by Congress and signed by the President must, of course, be constitutional. What leads you to believe that the law described in the proclamation is constitutional?
4. In the United States, no one is supposed to be above the law. What evidence is there that Washington is obeying the law he describes in the proclamation?

Using Decision-Making Skills

1. What was the occasion for Washington's decision?
2. What alternatives were open for President Washington in this case?
3. What were the likely consequences for each of the President's alternatives?
4. What were Washington's most important goals or values in this situation?
5. Why did Washington decide on the actions he finally took?
6. How would you judge Washington's decision in this case? Did he make a good decision? Explain your answer.

DOCUMENT

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA

A PROCLAMATION

Whereas combinations to defeat the execution of the laws laying duties upon spirits distilled within the United States and upon stills have from the time of the commencement of those laws existed in some of the western parts of Pennsylvania; and. . . .

Whereas many persons in the said western parts of Pennsylvania have at length been hardly enough to perpetrate acts which I am advised amount to treason, being overt acts of levying war against the United States. . . .

Whereas by a law of the United States entitled "An act to provide for calling forth the militia to execute the laws of the Union, suppress insurrections, and repel invasions," it is enacted "that whenever the laws of the United States shall be opposed or the execution thereof obstructed in any State by combinations too powerful to be suppressed by the ordinary course of judicial proceedings or by the powers vested in the marshals by that act, the same being notified by an associate justice or the district judge, it shall be lawful for the President of the United States to call forth the militia of such State to suppress such combinations and to cause the laws to be duly executed. And if the militia of a State where such combinations may happen shall refuse or be insufficient to suppress the same, it shall be lawful for the President, if the Legislature of the United States shall not be in session, to call forth and employ such numbers of the militia of any other State or States most convenient thereto as may be necessary; and the use of the militia so to be called forth may be continued, if necessary, until the expiration of thirty days after the commencement of the ensuing session: **Provided always,** That whenever it may be necessary in the judgment of the President to use the military force hereby directed to be called forth, the President shall forthwith, and previous thereto, by proclamation, command such insurgents to disperse and retire peaceably to their respective abodes within a limited time;" and

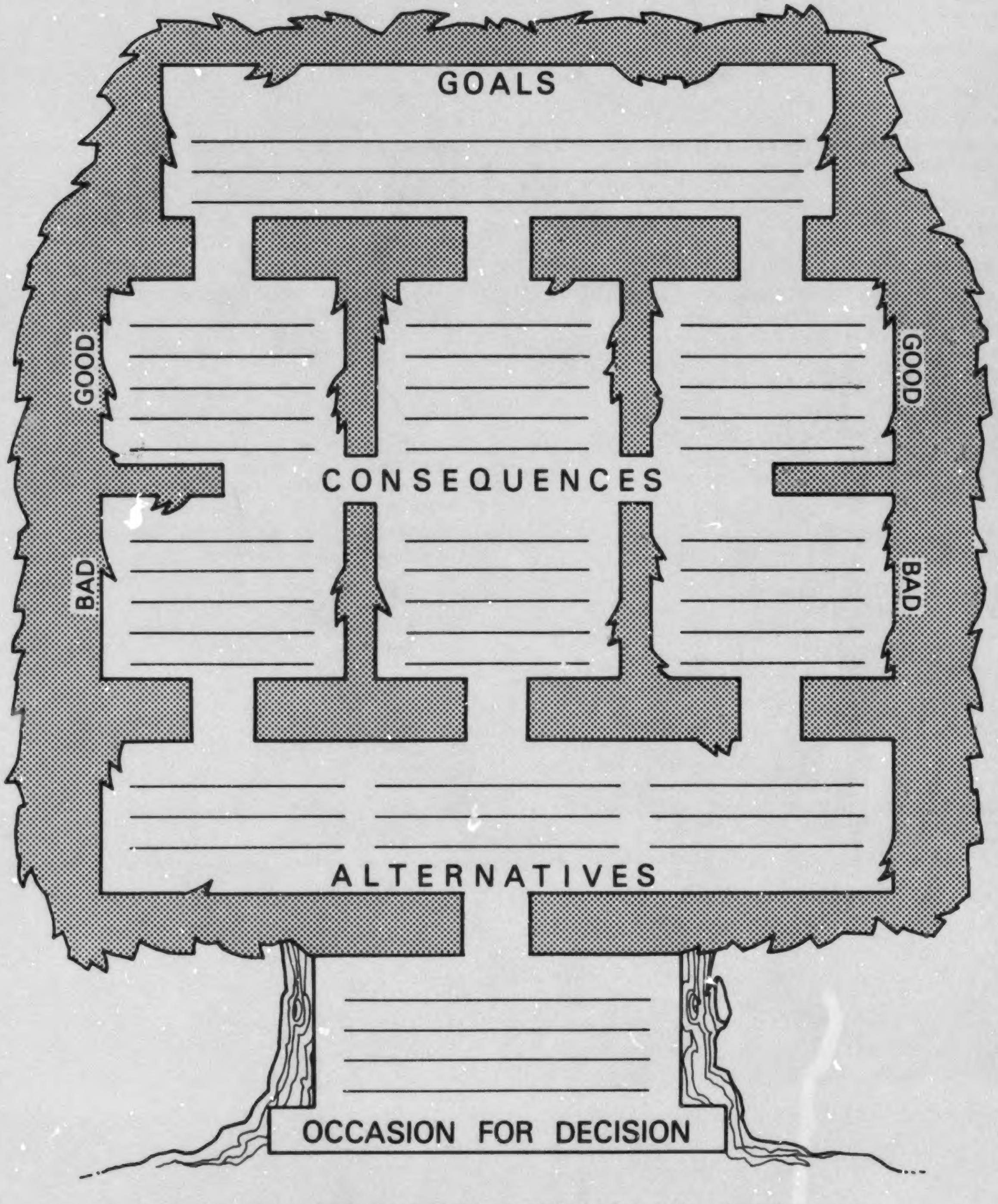
Whereas James Wilson, an associate justice, on the 4th instant, by writing under his hand, did from evidence which had been laid before him notify to me that "in the counties of Washington and Allegany, in Pennsylvania, laws of the United States are opposed and the execution thereof obstructed by combinations too powerful to be suppressed by the ordinary course of judicial proceedings or by the powers vested in the marshal of that district"; and

Whereas it is in my judgment necessary under the circumstances of the case to take measures for calling forth the militia in order to suppress the combinations aforesaid, and to cause the laws to be duly executed; and I have accordingly determined so to do, feeling the deepest regret for the occasion, but withal the most solemn conviction that the essential interests of the Union demand it, that the very existence of Government and the fundamental principles of social order are materially involved in the issue, and that the patriotism and firmness of all good citizens are seriously called upon, as occasions may require, to aid in the effectual suppression of so fatal a spirit:

Wherefore, and in pursuance of the proviso above recited, I, George Washington, President of the United States, do hereby command all persons being insurgents as aforesaid, and all others whom it may concern, on or before the 1st day of September next to disperse and retire peaceably to their respective abodes. And I do moreover warn all persons whomsoever against aiding, abetting, or comforting the perpetrators of the aforesaid treasonable acts, and do require all officers and other citizens, according to their respective duties and the laws of the land, to exert their utmost endeavors to present and suppress such dangerous proceedings. . . .

Done at the city of Philadelphia, the 7th day
of August, 1794, and of the Independence of
the United States of America the nineteenth.
G. Washington

DECISION TREE


GOALS
GOOD
GOOD
CONSEQUENCES
BAD
BAD
ALTERNATIVES
OCCASION FOR DECISION

The decision-tree device was developed by Roger LaRaus and Richard C. Remy and is used with their permission.

IV-6. STRETCHING THE CONSTITUTION: JEFFERSON'S DECISION TO PURCHASE LOUISIANA

LESSON PLAN AND NOTES FOR TEACHERS

Preview of Main Points

This lesson is about the constitutional significance of President Jefferson's decision to purchase the Louisiana Territory. Constitutional issues are examined, which pertain to the interpretation of federal government powers and the nature of the Federal Union. The effects of Jefferson's decision on constitutional development are assessed.

Connection to Textbooks

American history textbooks discuss the Louisiana Purchase. The issue of constitutional interpretation is raised. This lesson can be used in conjunction with the typical textbook discussion of the Louisiana Purchase. In-depth commentary is provided that can enrich the textbook treatments.

Objectives

Students are expected to:

1. Understand how Jefferson was confronted with the decision to purchase Louisiana.
2. Comprehend the constitutional issue about strict versus broad construction, which was raised by this decision.
3. Comprehend the constitutional issue about the nature of the Federal Union, which was raised by this decision.
4. Explain why Jefferson decided to purchase Louisiana.
5. Practice skills in analzying and judging a political decision.
6. Practice skills in interpreting evidence in primary source material.

Suggestions for Teaching the Lesson

This is a case study lesson, which provides in-depth information about an important presidential decision. Use questions presented at the end of the lesson to help students comprehend and analyze the facts and ideas of the case.

Opening the Lesson

- Inform students about the main points of the lesson.
- Ask them to present their opinions about why the decision to purchase Louisiana was the most important decision of Jefferson's two terms as President. Tell students that they'll have an opportunity to check their opinions against the facts of this case study.

Developing the Lesson

- Have students read the case study.
- Ask them to answer the questions about reviewing facts and ideas. You might wish to check student comprehension of the case by conducting a discussion of these questions.
- Move to consideration of the interpreting evidence questions. Have students review the two excerpts from primary sources, which are mentioned in this activity.
- Conduct a discussion of the questions about interpreting evidence.

Concluding the Lesson

- Have students use a "Decision Tree" chart to help them practice skills in analyzing and judging decisions.
- Divide the class into small groups of five or six members. Tell each group to use the "Decision Making" questions as guides to completing a decision tree about Jefferson's decision in this case.
- Ask one person in each group to be prepared to report the conclusion of the group about Jefferson's decision.
- Have the reporters from each group form a panel to discuss Jefferson's decision in front of the class. Encourage other students to question, criticize, or otherwise interact with the panelists.

Suggested Reading

Here are two chapters from outstanding history books, which provide substantial and illuminating discussions of the Louisiana Purchase.

Burns, James MacGregor. *The Vineyard of Liberty.* New York: Alfred A. Knopf, 1982, 172-182.

Morris, Richard B. *Great Presidential Decisions: State Papers That Changed the Course of History.* New York: Harper & Row Publishers, Perennial Library, 1973, 56-68.

IV-6. STRETCHING THE CONSTITUTION: JEFFERSON'S DECISION TO PURCHASE LOUISIANA

President Thomas Jefferson faced a difficult decision during the summer of 1803. Napoleon, the Emperor of France, had offered to sell Louisiana to the United States for $15 million. This vast territory extended westward from the Mississippi River to the Rocky Mountains and southward from the Canadian border to the Gulf of Mexico and the Spanish territories of Texas and New Mexico.

Jefferson had wanted to buy only the region around the mouth of the Mississippi River which included the port of New Orleans for $2 million. American farmers in the Ohio River Valley depended on access to New Orleans. They loaded their crops onto boats and rafts and floated them down the Mississippi to New Orleans. From New Orleans ships transported the crops to American cities along the Atlantic coast and to other countries. Americans feared that the French might interfere with their trade by imposing high taxes on products and ships moving through New Orleans. Worse, they dreaded that the French might close the port to Americans.

Napoleon's desire to sell not only New Orleans, but also the entire Louisiana Territory, an area of about 828,000 square miles, astounded President Jefferson. This territory was about as large as the total land area of the United States in 1803; and it was bigger than all of Western Europe. Although the total purchase price seemed high, it was not beyond the means of the United States to pay for it. Offered at a cost of four cents per acre, the land was a bargain.

Jefferson was excited by the chance to buy all of Louisiana. However, the President was not sure if he had the power under the Constitution to accept Napoleon's offer. He faced two related constitutional issues:

1. strict versus broad construction of the Constitution;
2. the nature of the Federal Union.

The Issue of Strict Construction

As leader of the Republican Party, Jefferson held the view of a "strict constructionist." He believed that the powers of the national government should be rigidly limited to those explicitly granted in the Constitution. According to a strict constructionist interpretation of the Constitution, Jefferson could not buy Louisiana because no statement in the Constitution granted power to the President or Congress to buy territory from another country.

According to the broad constructionists such as Alexander Hamilton, the President could use the "necessary and proper clause" (Article I, Section 8) to justify the assumption of powers not explicitly granted in the Constitution. This clause says: "The Congress shall have power. . . to make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the government of the United States, or in any department or officer thereof." (This clause is also known as the "elastic clause.")

Jefferson wanted to buy Louisiana, but he was reluctant to stretch the powers of the national government, as his Federalist party rivals had done during the 1790s when they had established a national bank. Jefferson expressed his dilemma in a letter to John Breckinridge of Kentucky, a Republican leader in the Senate:

> The treaty must of course, be laid before both Houses, because both have important functions to exercise respecting it. They, I presume, will see their duty to their country in ratifying and paying for it, so as to secure a good which would otherwise probably be never again in their power. But I suppose they must then appeal to the nation for an additional article [amendment] to the Constitution, approving and confirming an act which the nation had not previously authorized. . . .

The President believed that only an amendment to the Constitution could provide him with the constitutional authority to complete this deal with France. With the help of James Madison, the Secretary of State, President Jefferson drafted a proposed amendment to the Constitution:

> Louisiana as ceded by France to the United States is made a part of the United States. Its white inhabitants shall be citizens, and stand, as to their rights and obligations, on the same footing with other citizens of the United States in analogous situations.

Jefferson quickly dropped the idea of pressing for a constitutional amendment on the purchase of Louisiana. The amending process would take too much time. Napoleon might withdraw his offer while the amendment was pending. James Madison and other trusted leaders of the Republican Party also argued that the treaty-making power sanctioned in the Constitution could by extension legitimize the purchase of Louisiana. (See Article 2, Section 2.)

Jefferson agreed reluctantly with his advisers and decided to submit the treaty with France on the Louisiana purchase to the Senate for ratification. The President justified his action by saying that "the good sense of our country will correct the evil of loose construction when it shall produce ill effects." Ironically, Jefferson, the champion of strict construction, had made a major decision based on a broad construction interpretation of the Constitution.

An Issue About the Nature of the Federal Union

Before the treaty to purchase Louisiana could become binding, the Senators had to ratify the treaty by a two-thirds majority vote. (See Article 2, Section 2 of the Constitution.) Also, majorities in both the Senate and the House of Representatives had to appropriate the money needed to pay France (Article I, Section 7).

Most members of Congress agreed that the federal government possessed the constitutional power to purchase Louisiana. However, several members of Congress opposed Article III of the treaty, which stated: "The inhabitants of the ceded territory shall be incorporated in the Union of the United States, and admitted as soon as possible, according to the principles of the Federal Constitution, to the enjoyment of all the rights, advantages, and immunities of citizens of the United States. . . ." In other words, this part of the treaty implied that new states would be carved out of the Louisiana Territory and admitted to the Federal Union equal to and with the full rights of the original states.

Representative Roger Griswold, a Federalist from Connecticut, argued: "A new territory and new subjects may undoubtedly be obtained by conquest and by purchase; but neither the conquest nor the purchase can incorporate them into the Union. They must remain in the condition of colonies and be governed accordingly."

According to Griswold and his followers, the original thirteen states and other states made from territory belonging to the United States in 1788 when the Constitution was ratified should be superior to any territories subsequently acquired by the federal government. Griswold argued that the United States should hold Louisiana, if it purchased the territory, as only a colony.

Senator Timothy Pickering of Massachusetts, another Federalist, said that new states could not be made from the Louisiana Territory unless every state in the nation agreed to their creation. He argued that as the Federal Union was a partnership of states who had created it, no one could admit new states to this partnership without the unanimous agreement of the other states.

In Pickering's view the Federal Union derived its power primarily from the states rather than from the people of the nation as a whole. His idea reflected views more compatible with the nature of the Union under the Articles of Confederation than with the federal system of the Constitution.

A Decision and Its Consequences

Most members of Congress disagreed with Griswold and Pickering. On October 17, 1803, the Senate ratified Jefferson's treaty by a vote of 24 to 7. The House of Representatives voted to appropriate the money needed to make the purchase. The Senate also passed the money bill, empowering the President to conclude the deal with France, which he did.

Jefferson explained his deviation from strict construction of the Constitution:

> A strict observance of the written laws is doubtless **one** of the high duties of a good citizen, but it is not **the highest.** The laws of necessity, of self-preservation, of saving our country when in danger, are of higher obligation. To lose our country by a scrupulous adherence to written law, would be to lose the law itself, with life, liberty, property and all those who are enjoying them with us; thus absurdly sacrificing the end to the means.

Later, the President said: "Is it not better that the opposite bank of the Mississippi should be settled by our own brethren and children than by strangers of another family?" Americans responded by moving westward to populate and develop the new territory. The commissioned territory eventually made up all or part of thirteen states: Arkansas, Colorado, Iowa, Kansas, Louisiana, Minnesota, Missouri, Montana, Nebraska, North Dakota, Oklahoma, South Dakota, and Wyoming.

Through the purchase of Louisiana, the United States became one of the largest nations on earth. Later on, Americans learned that the territory included many acres of fertile soil and other valuable natural resources. Louisiana proved a richer prize than anyone imagined it at the time of its purchase.

In 1828, the Supreme Court affirmed the constitutionality of Jefferson's decision to purchase Louisiana. In *American Insurance Company v. Canter,* Chief Justice Marshall ruled that the federal government could acquire new territory under the treaty-making clause of the Constitution.

The decision to make the Louisiana Purchase was one of Thomas Jefferson's most important as President. He added greatly to the size and wealth of the United States. Furthermore, he contributed substantially, though unwillingly, to the precedent that, when necessary, the Constitution may be broadly interpreted to serve the public interest.

EXERCISES FOR LESSON IV-6

Reviewing Facts and Ideas

1. Why did President Jefferson want to purchase the region around New Orleans?
2. Why did the President hesitate to accept Napoleon's offer to sell the entire Louisiana Territory to the United States? Select one or more of the following answers. Explain your selections.
   a. the price was too high
   b. a majority of citizens opposed the purchase
   c. he was a strict constructionist
3. Why did James Madison believe that the President had a constitutional right to purchase Louisiana?
4. Why did Congressman Griswold oppose Article III of the Treaty to purchase Louisiana?
5. Why did Senator Pickering oppose Article III of the Treaty to purchase Louisiana?
6. What reasons did Jefferson use to explain his decision to purchase Louisiana?
7. How did Jefferson's decision to purchase Louisiana help to shape the meaning of the Constitution?

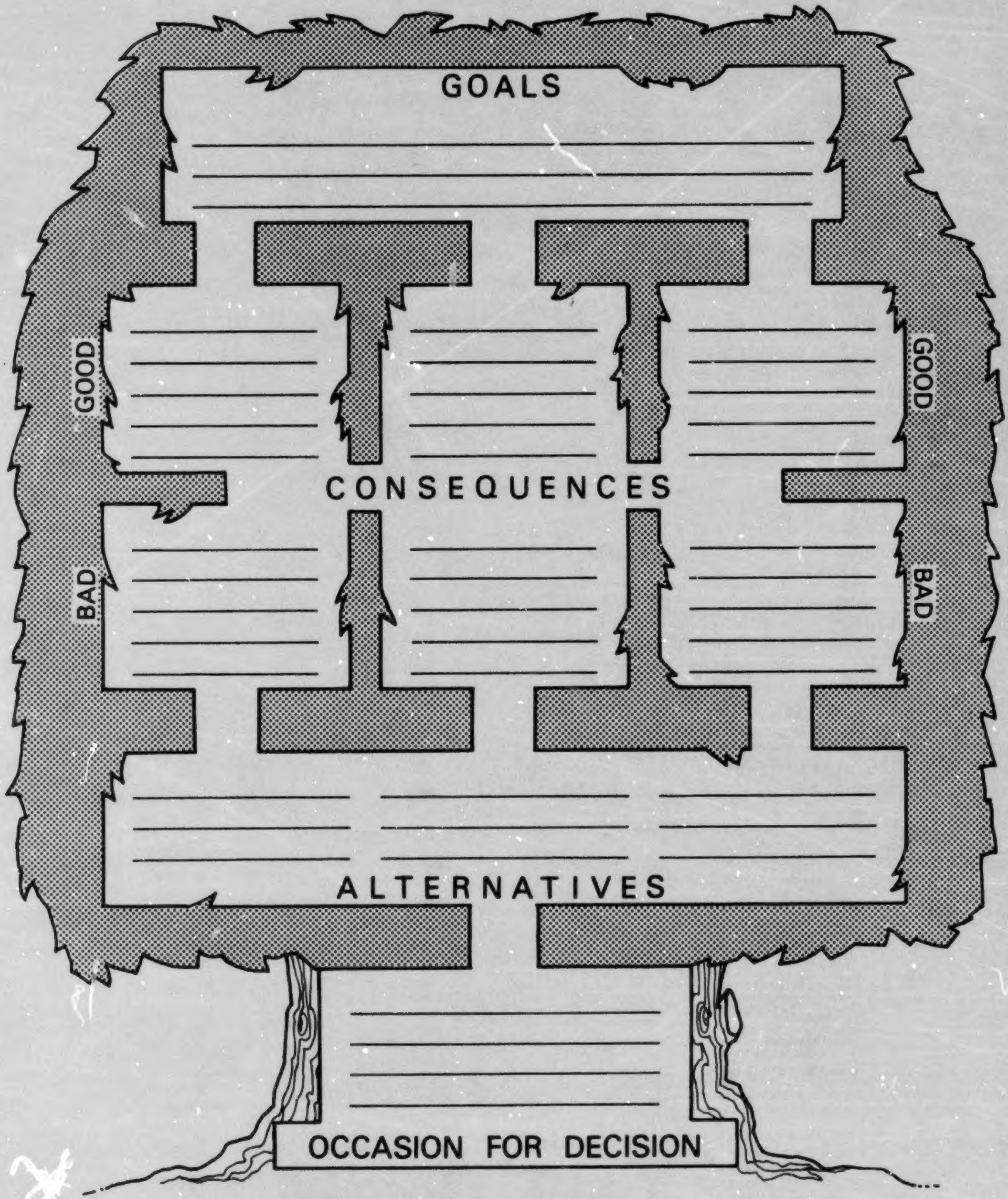
Interpreting Evidence

1. Refer to the excerpt from Jefferson's letter to Senator Breckinridge on page 215.
   a. Why did Jefferson say that the treaty had to be presented to both houses of Congress?
   b. Why did Jefferson say that the Constitution needed amending?
2. Refer to Jefferson's explanation, page 216, of his deviation from the strict constructionist position.
   a. What is the main idea of this statement?
   b. Does this statement exemplify the strict constructionist position or the broad constructionist position? Explain.
   c. Does this statement suggest lack of respect for the Constitution as the supreme law of the land?
   d. To what extent do you agree or disagree with this statement?
3. Why do you think the "necessary and proper" clause of Article I, Section 8 is sometimes called the "elastic clause" of the Constitution?

Decision Making

1. Why did Jefferson have the opportunity to decide whether or not to purchase Louisiana?
2. What alternatives did the President have?
3. What were likely consequences (positive and negative) of Jefferson's alternatives?
4. What were the President's goals?
5. Why did the President decide to purchase Louisiana?
6. How do you appraise Jefferson's decision? Was it a good decision?

DECISION TREE


GOALS
GOOD
GOOD
CONSEQUENCES
BAD
BAD
ALTERNATIVES
OCCASION FOR DECISION

The decision-tree device was developed by Roger LaRaus and Richard C. Remy and is used with their permission.

IV-7. THE COURT AND DEVELOPMENT OF THE COMMERCE POWER

LESSON PLAN AND NOTES FOR TEACHERS

Preview of Main Points

The lesson describes the case of *Gibbons v. Ogden.* The case shows how the powers of Congress to regulate interstate commerce were broadly interpreted by Chief Justice Marshall. Through liberal interpretation of the commerce power this case opened the door for a vast expansion of national control over commerce. An important precedent was set.

Connection to Textbooks

This lesson can be used with government textbook material on the powers of Congress or federalism. It can be used with history textbook discussions of the roots of American economic growth starting in the 1820s or with discussions of the Marshall Court. The lesson provides a more in-depth look at the issues and judicial reasoning involved in the development of the commerce power.

Objectives

Students are expected to:

1. Explain the circumstances leading up to the *Gibbons* case.
2. Identify the key participants and constitutional issues involved in the *Gibbons* case.
3. Identify the arguments presented by both sides in the case.
4. Explain the immediate effect of the decision on the growth of the commerce in the United States.
5. Explain the long-term significance of the Court's decision for the growth of congressional power to regulate commerce.
6. Use evidence in a table to draw conclusions about the growth of congressional powers to regulate commerce.

Suggestions for Teaching the Lesson

This lesson can be used as an "in-depth" case-study to accompany textbook discussions of Congress' commerce power, American economic growth, or the Marshall Court.

Opening the Lesson

- Preview the main parts of the lesson for students.
- Explain how this lesson is connected to the material they have just studied in the textbook.

Developing the Lesson

- Have students read the case study.
- Conduct a discussion of the questions under "Reviewing the Case" to make sure students have understood the main ideas.

Concluding the Lesson

- Go over table 1 with the students. Help them to comprehend the meaning of each item in the table.
- Have students follow the instructions under "Interpreting Evidence." Use the answer sheet on the next page to provide "feedback" to students during and after their discussion of the questions in the section, "Interpreting Evidence."

Answers to the Questions

- Question 7 asks students to think about the values of regulation and competition in our economy. There are no completely correct answers. Here are some possible correct answers. Most people would agree that it is better to have one local phone system that is regulated, and guaranteed a monopoly, than to have competing phone systems, forcing customers to own two or three different phones at a time. Similarly, students might think about the efficiency of only one company providing water, electricity, gas, and similar public utilities in a town or area. If there is a bus system, trolley company, subway system, or commuter railroad in your area, you might use these as examples of areas of commerce that might serve the public best as regulated monopolies. Could a commuter railroad stay in business if it were competing directly with another railroad line? Wouldn't both go bankrupt? If only one went bankrupt, would it serve the public best as an **unregulated monopoly?** Examples of the value of competition will be more obvious to students.

Suggested Reading

Baxter, Maurice G. *The Steamboat Monopoly: Gibbons v. Ogden, 1824.* Philadelphia: Philadelphia Book Co., 1972.

Dangerfield, George. "The Steamboat Case." *Quarrels That Have Shaped the Constitution,* by John Garraty. New York: Harper & Row, 1966.

ANSWERS FOR INTERPRETING EVIDENCE

1. *Kidd v. Pearson; Carter v. Carter Coal Co.*
2. *Swift,* "stream of commerce" doctine; *Shreveport,* the "Shreveport Doctrine." *National Labor Relations Board v. Jones & Laughlin Steel Corp.*
3. *Champion v. Ames; McCray v. United States; National Labor Relations Board v. Jones & Laughlin; Milford v. Smith; United States v. Darby Lumber Co.; Wickard v. Filburn; Heart of Atlanta v. United States.*
4. In *Hammer v. Dagenhart* and *Bailey v. Drexel* the Court struck down attempts to limit child labor. *United States v. Darby* overthrew these two cases.
5. *Hammer v. Dagenhart; Bailey v. Drexel; Railroad Retirement Board v. Alton Railroad Co.; Carter v. Carter Coal Co.* In these cases the Court turned back government efforts to regulate or become more involved in the affairs of private business.
6. The Court has consistently expanded Congress' commerce power. Five out of the six cases since 1937 have increased Congress' power or expanded the meaning of "commerce."

IV-7. THE COURT AND DEVELOPMENT OF THE COMMERCE POWER

Article II of the Constitution gives Congress the power "to regulate Commerce. . .among the several states." But what does the term "commerce" mean? What can Congress regulate under the jurisdiction of its commerce power? Under what circumstances if any does Congress share this power with the states?

The Supreme Court's first major decision defining the meaning of the commerce power involved a controversy over steamboats. In the early 1800s Robert Fulton developed the steamboat as a practical means of travel. Fulton's smoke-belching vessel started a chain of events that led to the case of *Gibbons v. Ogden* (1824).

The Court's decision in that case set a precedent reflected in many subsequent Supreme Court decisions. A **precedent** is an earlier judicial decision which judges look to for guidance in trying cases. Judges pay careful attention to precedents (earlier decisions in similar cases) when making decisions.

Judges often use a practice called **stare decisis** regarding precedent. **Stare decisis** means "let the decision stand." Judges let the prior line of decisions on a point of law—the precedents—stand, unless they discover very good reasons to act otherwise.

Many court decisions in similar cases have relied on the precedent set by the Supreme Court decision in the *Gibbons* case. (See table 1 on page 222 .) These decisions have allowed Congress to expand greatly the powers of the national government.

Background of the Case

As it flows to the sea, the Hudson River separates the states of New York and New Jersey. In 1807 Robert Fulton's steamboat, the *Clermont,* made its first successful trip up the Hudson. The next year the New York Legislature gave Fulton and a partner a monopoly to operate steamboats on the river. The partners subsequently sold Aaron Ogden a license to run a steamboat ferry between New York City and New Jersey.

Ogden's business prospered. Then Thomas Gibbons set up a competing line. Gibbons ran his two boats under a license for coastal shipping Congress granted him through a 1789 law. In 1819, Ogden sued Gibbons in a New York state court and won. The court ordered Gibbons to stop operating his steamboat service because it interfered with Ogden's monopoly. Gibbons promptly appealed to the United States Supreme Court.

From the start, public interest in the case ran high. By the 1820s, steamboats had become an important means of transportation on the lakes and rivers of the growing nation. Other states besides New York had begun granting steamboat monopolies. As a result, states competed with one another. New Jersey and Ohio closed their waters to boats licensed by the New York monopoly. The navigational chaos that followed brought the states to what one contemporary lawyer called "almost. . .the eve of war."

The Founding Fathers had sought to avoid such problems by giving Congress the constitutional power to "regulate commerce among the several states." In appealing to the Supreme Court, Gibbons pointed out that his federal license should take precedence over Ogden's state-granted license because the steamboats were engaged in interstate commerce.

In 1824 the case reached the Supreme Court. Thirty-five years after its establishment, the Supreme Court presided over a case to interpret the power of Congress to regulate interstate commerce. Some of the best lawyers in the country prepared to argue the issue before the Court.

Legal Issues

The case involved two key questions. **First,** what did "commerce" include? Did the commerce clause of the Constitution give Congress the power to regulate navigation? **Second,** did Congress possess exclusive power or did the states along with Congress have some rights to regulate interstate commerce?

Arguments

Daniel Webster presented Gibbon's case. Webster claimed that navigation was indeed commerce. He argued "that the power of Congress to regulate commerce was complete and entire, and. . .necessarily exclusive."

The attorneys for Ogden argued for a narrow definition of commerce. They contended that commerce meant only "the transportation and sale of commodities." The states should regulate a matter like navigation.

The Court's Decision

On March 2, 1824, the Court ruled in favor of Gibbons. Chief Justice John Marshall, speaking for the Court, rejected Ogden's argument for a narrow definition of commerce. "Commerce undoubtedly is traffic," Marshall said, "but it is something more." Marshall concluded that "commerce" included all forms of trade, communication, and movement "between nations, and parts of nations."

Further, Marshall explained that navigation was clearly a part of commerce. "All America understands," he said, "the word 'commerce' to comprehend navigation." Thus, Congress' power over commerce included and includes navigation.

Marshall, however, did not rule that Congress had exclusive power. Instead, he said simply that the New York state law violated the federal law under which Gibbons had obtained his license. The Court left open the question of whether states could regulate areas of commerce Congress had not regulated.

Nor did Marshall resolve the question of whether or not the states and Congress could simultaneously regulate commerce. Marshall explained that a state might employ measures concerned with commerce similar to those established by Congress. However, if a state law interfered with the federal law, the federal law always took precedence. Consequently, the New York state law was invalid; it interfered with the federal law on coastal ships.

Significance of the Court's Decision

The decision was immensely popular because it led to increased steamboat usage. At the time, however, few people realized how the decision would add to the growth of the country and to the power of the national government.

The *Gibbons* case spurred the growth of the American economy. Steamboat navigation increased tremendously. Soon steam railroads began to cross the country and to open up the West. Freeing interstate commerce from state monopolies also encouraged the rapid development of railroads.

Congress did not enact many regulations on interstate commerce until the Twentieth century. However, Congress often protected growing industries by imposing high tariff rates (taxes) on imported goods. These tariffs raised the price of manufactured goods that came from Europe. Tariffs allowed new American industries to develop free from the competition of European manufacturers.

At the same time, the states also continued to regulate industries and commerce. *Gibbons v. Ogden* did not prohibit state regulation of commerce or the granting of monopolies within a state's boundaries. In fact, states still granted road, canal, steamboat, and railroad monopolies for concerns operating solely within one state. Similarly, the states or local governments acting under authority granted by state laws have continued to regulate anything that might be considered a public utility, from street cars in the late nineteenth century to cable television stations in the late twentieth century.

Thus, *Gibbons v. Ogden* did not immediately lead to extensive federal regulation of interstate commerce. Yet, the decision did open the door for the vast expansion of national control over commerce we have today. The Court's broad interpretation of the meaning of "commerce" ultimately enabled Congress to regulate manufacturing, child labor, farm production, wages and hours, labor unions, civil rights, and criminal conduct as well as buying and selling. Any activity affecting interstate commerce is now subject to national control. The commerce power first defined in this case has evolved into one of the major constitutional provisions Congress uses to police many areas of American life.

EXERCISES FOR LESSON IV-7

Reviewing the Case

1. Describe the events leading to the *Gibbons* case.
2. What was the issue in the *Gibbons* case? What arguments did each side employ?
3. What did the Court decide?
4. What reasons did the Court give for the decision?
5. What long-term effects did the decision have?

Interpreting Evidence

Gibbons was the first case to define the commerce power. The decision established broad congressional powers to regulate "interstate commerce," commerce affecting more than one state. At the same time, the decision did not specify all the possible areas to which Congress might apply that power to "regulate" commerce. For example, could Congress regulate child labor conditions as part of its commerce power?

The *Gibbons* case also interpreted the meaning of the term "commerce" to encompass not only "navigation" but also other forms of trade, movement, and business. However, the Court did not spell out exactly what these other forms included. For instance, did "commerce" include coal mining?

Thus, the *Gibbons* ruling established a **precedent,** but it was left to later courts to determine the scope of the commerce power on a case-by-case basis. Table 1 (page 222) lists some of the Court's major decisions on the commerce power made in the more than 150 years since *Gibbons v. Ogden.* Through these decisions the Court has further defined Congress' power to regulate commerce in accordance with the commerce clause. Study the table and answer these questions:

1. Name two decisions that elaborated upon what the Supreme Court's definition of the term "commerce" does or does not include.
2. Describe key doctrines announced in the *Swift* and *Shreveport* cases. In what later case did the Court refer to these as a precedent?
3. Name seven decisions that expanded Congress' "police" power under the commerce clause.

4. In which cases did the Court rule Congress could not use the commerce power to regulate child labor? What later case overturned the child labor decision?
5. Historians claim that from the late 1800s to 1937 the Supreme Court adopted a conservative point of view. Thus, the Court often struck down as unconstitutional laws it viewed as interfering with the free operation of business. Identify four cases supporting this claim. Explain.
6. Since 1937 what stance has the Court held on commerce power? Support your answer with evidence from the table.

TABLE 1

The Court and Development of the Commerce Power

1888—**Kidd v. Pearson**

Manufacturing of goods such as liquor is not commerce. Thus, Congress cannot regulate such manufacturing as interstate commerce.

1903—**Champion v. Ames**

Congress may use its power to regulate commerce to outlaw the interstate sale and shipment of lottery tickets.

1904—**McCray v. United States**

Congress may regulate the sale of oleomargarine (a butter substitute) by placing a high tax on oleomargarine. This decision, along with *Champion,* strengthened Congress' ability to use the commerce power as a "police" power.

1905—**Swift and Co. v. United States**

Court announces "stream of commerce" doctrine. The meat packing industry is part of a "stream of commerce" from the time an animal is purchased, on the hoof, until it is processed and sold as meat. Congress could regulate at any point along that "stream."

"Stream of commerce" doctrine became a basic legal concept in the expansion of the federal commerce power.

1908—**Adair v. United States**

Labor relations do not directly affect interstate commerce. Thus, Congress cannot use the commerce power to prohibit certain kinds of labor contracts.

1910—**Hammer v. Dagenhart**

Congress may not use the commerce power as police power to regulate working conditions for child laborers, or to prohibit the use of children in factories.

1914—**Shreveport Rate Cases**

Court announces the "Shreveport Doctrine." The federal government has power to regulate rail rates within states (intrastate) as well as between states (interstate).

Sets the key precedent that whenever intrastate and interstate transactions (such as rail rates) become so related that regulation of one involves control of the other, Congress, **not** the states, has final authority.

1922—**Bailey v. Drexel Furniture Co.**

Congress may not use its police power to place a high tax on the profits of companies employing child laborers.

This decision along with **Hammer** in 1918 greatly narrowed the federal "police" power. With these two decisions the Court frustrated attempts by Congress to end child labor.

1935—**Railroad Retirement Board v. Alton Railroad Co.**

The commerce clause does not give Congress the power to set up a pension system for railroad workers.

1936—**Carter v. Carter Coal Co.**

Mining is not commerce and does not affect commerce directly. Thus, Congress may not regulate labor relations in the coal mining industry.

1937—**National Labor Relations Board v. Jones & Laughlin Steel Corp.**

Congress may regulate labor relations in manufacturing to prevent possible interference with interstate commerce. This decision overturned the *Adair* and *Carter* decisions.

With this decision the Court gave up the narrow view of Congress' power to regulate commerce it had followed for many years. It based its decision on precedents set in the *Swift* and *Shreveport* cases.

1939—**Mulford v. Smith**

The commerce power gives Congress the authority to regulate marketing quotas for agricultural production.

1941—**United States v. Darby Lumber Co.**

Congress may use commerce power to prohibit from interstate commerce goods made under substandard labor conditions. Overturns *Dagenhart* decision.

1942—**Wickard v. Filburn**

Congress may regulate agricultural production affecting interstate commerce even if produce is not meant for sale.

1964—**Heart of Atlanta Motel v. United States**

Congress may use commerce power to prohibit public hotels and motels from discriminating against customers on the basis of race.

1976—**National League of Cities v. Usery**

Congress cannot use its commerce power to establish wage and hour standards for state and local government employees.

Source: Elder Witt, ed., *Guide to the U.S. Supreme Court.* Washington, D.C.: Congressional Quarterly, Inc., 1979, 94; Paul L. Murphy, private communication.

IV-8. TWO RESPONSES TO A CONSTITUTIONAL CRISIS: DECISIONS OF BUCHANAN AND LINCOLN ABOUT SECESSION

LESSON PLAN AND NOTES FOR TEACHERS

Preview of Main Points

This lesson highlights statements of two Presidents—Buchanan and Lincoln—about the constitutional crisis of secession by the southern states. Buchanan and Lincoln responded quite differently. Both Presidents believed that secession was illegal. However, Buchanan seemed to believe that the federal government could do nothing about it. In contrast, Lincoln believed it was his duty as President to act forcefully, if necessary, to defend the Constitution and preserve the Union. The contrasting responses of Buchanan and Lincoln to the crisis of secession reveal contrasting interpretations of the Constitution and the consequences of those different views.

Connection to Textbooks

This lesson fits history textbook chapters on the Civil War. It can be used with government textbook chapters on the presidency, since it presents contrasting views about the constitutional powers of the President.

Objectives

Students are expected to:

1. Identify and explain the conflicting views of the nature of the Federal Union, which was a main cause of secession.
2. Identify and explain the constitutional bases of President Buchanan's response to the threat of secession.
3. Identify and explain the constitutional bases of President Lincoln's response to the fact of secession by several southern states.
4. Compare the responses of Buchanan and Lincoln to the constitutional crisis represented by secession.
5. Analyze comparatively the decisions made by Buchanan and Lincoln about the issue of secession.
6. Practice skills in using evidence in documents to answer questions about constitutional history.

Suggestions for Teaching the Lesson

This lesson might be used in a history course as part of an introduction to the study of the Civil War. Or it might be used in a government course as a "springboard" into examination of how different Presidents have viewed the powers and duties of their office.

Opening the Lesson

- Begin by previewing the main points of the lesson for students. This provides students with advanced notice of the material they are to read.
- Ask students to speculate about responses that a President might and/or should make to the threat of secession. This speculative discussion can serve as a back-drop and warm-up for comparative examination of the responses of two Presidents—Buchanan and Lincoln—to the constitutional crisis of secession.

Developing the Lesson

- Have students read the materials in this lesson. Focus their attention on four documents: the Fourth Annual Message to Congress of President Buchanan, the First Inaugural Address of President Lincoln, the Proclamation of President Lincoln, and the Preamble to the Constitution of the Confederate States of America.
- Have students respond to the questions requiring them to interpret evidence in the four documents listed above.

Concluding the Lesson

- Have students respond to the questions asking them to compare the decisions of Buchanan and Lincoln. Duplicate and distribute two copies of the decision tree for each student in the class. These decision trees can be used as a guide to the comparative analysis of the decisions of Buchanan and Lincoln about the crisis represented by secession.
- Have students make judgments about the decisions of Buchanan and Lincoln in terms of consequences and values.
- As an additional activity, you might want to have students examine and interpret the response of President Jefferson Davis to the forceful actions of President Lincoln to stop secession. To carry out this activity duplicate and distribute a copy of the document on page 226, Jefferson Davis' message to the Congress of the CSA. Use these questions as a guide to the analysis and discussion of this document.

1. What were Jefferson Davis' views about the power that state governments ought to have within a Federal Union? (Compare these ideas to those of the Antifederalists during the debates about ratification of the Constitution.)

2. According to Davis, what were the constitutional bases for secession? (How did the northern states abuse the Constitution so as to cause the southern states to withdraw from the Federal Union?)

3. Why did Davis believe that the southern states had the right to secede and form their own confederation?

4. What were the differences in the views of Davis and Lincoln about the powers of state governments under the Constitution of the U.S.A.?

5. What does Davis' speech reveal about causes of the Civil War?

Suggested Readings

Morris, Richard B. *Great Presidential Decisions.* New York: Harper & Row Publishers, Perennial Library Edition, 1973, 213-250. The decisions of Buchanan and Lincoln about secession are discussed with reference to state papers that were issued to explain and justify these decisions.

Kelly, Alfred H., Winfred H. Harbison and Herman Belz. *The American Constitution: Its Origins and Development.* 6th ed. New York: W. W. Norton & Company 1983, 271-327. These pages treat the constitutional crisis brought about by the issue of secession by the southern states. The period from 1851-1865 is treated.

Suggested Films

The Civil War: The Anguish of Emancipation

The film borrows dialogue from speeches and written records to dramatize Lincoln's personal struggle to ensure the preservation of the Union and uphold the Constitution, while simultaneously striking a blow at slavery. It shows the horror and futility of war as a means to resolve political disputes, and reveals how emancipation was determined more by military necessity than moral imperatives. Learning Corporation of America, 1972, 28 minutes.

States' Rights

The 1832 confrontation between President Jackson and John C. Calhoun over a tariff law favoring the industrial North to the detriment of southern cotton growers is dramatized in this film. The threat of South Carolina's secession from the Union raises the issue of the rights of a state to refuse to obey a national law. From the *History Alive* series, TW Productions/Walt Disney Productions, 1970, 14 minutes.

MESSAGE TO THE CONGRESS OF THE CONFEDERATE STATES OF AMERICA

April 29, 1861

Gentlemen of the Congress. . . .

The declaration of war made against this Confederacy by Abraham Lincoln, the President of the United States, in his proclamation issued on the 15th day of the present month, rendered it necessary, in my judgment, that you would convene at the earliest practicable moment to devise the measures necessary for the defense of the country. The occasion is indeed an extraordinary one. It justifies me in a brief review of the relations heretofore existing between us and the States which now united in warfare against us. . . .

. . .The Constitution of 1787, having however, omitted the clause. . .from the Articles of Confederation, which provided in explicit terms that each State **retained** its sovereignty and independence, some alarm was felt in the States, when invited to ratify the Constitution, lest this omission should be construed into an abandonment of their cherished principle, and they refused to be satisfied until amendments were added to the Constitution placing beyond any pretense of doubt the reservation by the States of all their sovereign rights and powers not expressly delegated to the United States by the Constitution.

Strange, indeed, must it appear to the impartial observer, but it is none the less true that all these carefully worded clauses proved unavailing to prevent the rise and growth in the Northern States of a political school which has persistently claimed that the government thus formed was not a compact **between** States, but was in effect a national government, set up **above** and **over** the States. An organization created by the States to secure the blessings of liberty and independence against **foreign** aggression, has been gradually perverted into a machine for their control in their **domestic** affairs. The **creature** has been exalted above its **creators;** the **principals** have been made subordinate to the **agent** appointed by themselves. The people of the Southern States, whose almost exclusive occupation was agriculture, early perceived a tendency in the Northern States to render the common government subservient to their own purposes by imposing burdens on commerce as a protection to their manufacturing the shipping interests. . . . By degrees, as the Northern States gained preponderance in the National Congress, self-interest taught their people to yield ready assent to any plausible advocacy of their right as a majority to govern the minority without control. They learned to listen with impatience to the suggestion of any constitutional impediment to the exercise of their will, and so utterly have the principles of the Constitution been corrupted in the Northern mind that, in the inaugural address delivered by President Lincoln in March last, he asserts as an axiom, which he plainly deems to be undeniable, that the theory of the Constitution requires that in all cases the majority shall govern;. . .This is the lamentable and fundamental error on which rests the policy that has culminated in his declaration of war against these Confederate States. . . .

. . .the transaction of public affairs was impeded by repeated efforts to usurp powers not delegated by the Constitution for the purpose of impairing the security of property in slaves, and reducing those States which held slaves to a condition of inferiority. . . .

. . .In the exercise of a right so ancient, so well-established, and so necessary for self-preservation, the people of the Confederate States, in their conventions, determined that the wrongs which they had suffered and the evils with which they were menaced required that they should revoke the delegation of powers to the Federal Government which they had ratified in their several conventions. They consequently passed ordinances resuming all their rights as sovereign and independent States and dissolved their connection with the other States of the Union.

Having done this, they proceeded to form a new compact amongst themselves by new articles of confederation, which have been also ratified by the conventions of the several States with an approach to unanimity far exceeding that of the conventions which adopted the Constitution of 1787. They have organized their new Government in all its departments; the functions of the executive, legislative, and judicial magistrates are performed in accordance with the will of the people, as displayed not merely in a cheerful acquiescence, but in the enthusiastic support of the Government thus established by themselves; and but for the interference of the Government of the United States in this legitimate exercise of the right of a people to self-government, peace, happiness, and prosperity would now smile on our land. . . .

Jefferson Davis

IV-8. TWO RESPONSES TO A CONSTITUTIONAL CRISIS: DECISIONS OF BUCHANAN AND LINCOLN ABOUT SECESSION

"LINCOLN ELECTED PRESIDENT" read the headlines in American newspapers on November 6, 1860. Abraham Lincoln's election signaled a constitutional crisis. Leaders in several southern states threatened to secede, or withdraw, from the Federal Union.

Buchanan's Decision About a Constitutional Crisis

Lincoln would not take office until March 4, 1861. Thus, the outgoing President, James Buchanan, faced the problem of secession during the four months between Lincoln's November election and his March inauguration. On December 3, 1860, President Buchanan delivered his last annual message to Congress. He offered his opinion of how the federal government should respond to secession by one or more states.

FOURTH ANNUAL MESSAGE

Washington City
December 3, 1860

Fellow-Citizens of the Senate and House of Representatives:

. . . it is beyond the power of any President, no matter what may be his own political proclivities, to restore peace and harmony among the States. Wisely limited and restrained as is his power under our Constitution and laws, he alone can accomplish but little for good or for evil on such a momentous question. . .

The question fairly stated is, Has the Constitution delegated to Congress the power to coerce a State into submission which is attempting to withdraw or has actually withdrawn from the Confederacy [Federal Union]? If answered in the affirmative, it must be on the principle that the power has been conferred upon Congress to declare and to make war against a State. After much serious reflection I have arrived at the conclusion that no such power has been delegated to Congress or to any other department of the federal government. It is manifest upon an inspection of the Constitution that this is not among the specific and enumerated powers granted to Congress, and it is equally apparent that its exercise is not "necessary and proper for carrying into execution" any one of these powers. . . .

Without descending to particulars, it may be safely asserted that the power to make war against a State is at variance with the whole spirit and intent of the Constitution. . . .

The fact is that our Union rests upon public opinion, and can never be cemented by the blood of its citizens shed in civil war. If it cannot live in the affections of the people, it must one day perish. Congress possesses many means of preserving it by conciliation, but the sword was not placed in their hand to preserve it by force.

But may I be permitted solemnly to invoke my countrymen to pause and deliberate before they determine to destroy this the grandest temple which has ever been dedicated to human freedom since the world began? . . .

Congress can contribute much to avert it by proposing and recommending to the legislatures of the several States the remedy for existing evils which the Constitution has itself provided for its own preservation. This has been tried at different critical periods of our history, and always with eminent success. It is to be found in the fifth article, providing for its own amendment. Under this article amendments have been proposed by two-thirds of both Houses of Congress, and have been "ratified by the legislatures of three-fourths of the several States," and have consequently become parts of the Constitution. . . .

This is the very course which I earnestly recommend in order to obtain an "explanatory amendment" of the Constitution on the subject of slavery. This might originate with Congress or the State legislatures, as may be deemed most advisable to attain the object. The explanatory amendment might be confined to the final settlement of the true construction of the Constitution on three special points:

1. An express recognition of the right of property in slaves in the States where it now exists or may hereafter exist.

2. The duty of protecting this right in all the common Territories throughout their Territorial existence, and until they shall be admitted as States into the Union, with or without slavery, as their constitutions may prescribe.

3. A like recognition of the right of the master to have his slave who has escaped from one state to another restored and "delivered up" to him, and of the validity of the fugitive-slave law enacted for this purpose. . . .

. . . . Such an explanatory amendment would, it is believed, forever terminate the existing dissensions, and restore peace and harmony among the States.

Lincolns' Decision About a Constitutional Crisis

On December 20, seventeen days after President Buchanan's speech, the state government of South Carolina seceded from the Federal Union. Keeping with the view expressed in his speech, President Buchanan did nothing to oppose South Carolina. During the next few weeks, six more southern states seceded: Florida, Georgia, Alabama, Mississippi, Texas, and Louisiana. By March 3, 1861, Lincoln's inauguration day, the Federal Union was in grave danger. In his Inaugural Address, Lincoln announced his plan to respond to the constitutional crisis.

FIRST INAUGURAL ADDRESS

It is seventy-two years since the first inauguration of a President under our National Constitution. During that period fifteen different and greatly distinguished citizens have in succession administered the executive branch of the Government. They have conducted it through many perils, and generally with great success. Yet, with all this scope of precedent, I now enter upon the same task for the brief constitutional term of four years under great and peculiar difficulty. A disruption of the Federal Union, heretofore only menaced, is now formidably attempted.

I hold that in contemplation of universal law and of the Constitution the Union of these States is perpetual. Perpetuity is implied, if not expressed, in the fundamental law of all national governments. It is safe to assert that no government proper ever had a provision in its organic law for its own termination. Continue to execute all the express provisions of our National Constitution, and the Union will endure forever, it being impossible to destroy it except by some action not provided for in the instrument itself.

Again: If the United States be not a government proper, but an association of States in the nature of contract merely, can it, as a contract, be peaceably unmade by less than all the parties who made it? One party to a contract may violate it—break it, so to speak—but does it not require all to lawfully rescind it? . . .

It follows from these views that no State upon its own mere motion can lawfully get out of the Union; that **resolves** and **ordinances** to that effect are legally void; and that acts of violence within any State or States against the authority of the United States are insurrectionary or revolutionary, according to circumstances.

I therefore consider that in view of the Constitution and the laws the Union is unbroken, and to the extent of my ability I shall take care, as the Constitution itself expressly enjoins upon me, that the laws of the Union be faithfully executed in all the States. Doing this I deem to be only a simple duty on my part, and I shall perform it so far as practicable unless my rightful masters, the American people, shall withhold the requisite means or in some authoritative manner direct the contrary. I trust this will not be regarded as a menace, but only as the declared purpose of the Union that it **will** constitutionally defend and maintain itself. . . .

Plainly the central idea of secession is the essence of anarchy. A majority held in restraint by constitutional checks and limitations, and always changing easily with deliberate changes of popular opinions and sentiments, is the only true sovereign of a free people. Whoever rejects it does of necessity fly to anarchy or to despotism. Unanimity is impossible. The rule of a minority, as a permanent arrangement, is wholly inadmissible; so that, rejecting the majority principle, anarchy or despotism in some form is all that is left. . . .

In **your** hands, my dissatisified fellow-countrymen, and not in **mine**, is the momentous issue of civil war. The Government will not assail **you.** You can have no conflict without being yourselves the aggressors. **You** have no oath registered in heaven to destroy the Government, while **I** shall have the most solemn one to "preserve, protect, and defend it."

I am loath to close. We are not enemies, but friends. We must not be enemies. Though passion may have strained it must not break our bonds of affection. The mystic chords of memory, stretching from every battlefield and patriot grave to every living heart and hearthstone all over this broad land, will yet swell the chorus of the Union, when again touched, as surely they will be, by the better angels of our nature.

March 4, 1861

By this time any compromise that might hold the Union together no longer interested the seven states of the deep South. They aimed to form a new nation, the Confederate

States of America (CSA). The preamble to the Constitution of the CSA stated:

> We, the people of the Confederate States, each State acting in its sovereign and independent character, in order to form a permanent federal government, establish justice, insure domestic tranquility, and secure the blessings of liberty to ourselves and our posterity—invoking the favor and guidance of Almighty God—do ordain and establish this Constitution for the Confederate States of America.

The CSA claimed and occupied property and territory belonging to the United States. This property included military forts the United States government had built in the South to protect the nation. On April 14, 1861 Confederate troops began shelling Ft. Sumter, a federal fortification situated in the harbor of Charleston, South Carolina. The next day President Lincoln issued the following proclamation.

By the President of the United States

A PROCLAMATION

Whereas the laws of the United States have been for some time past and now are opposed and the execution thereof obstructed in the States of South Carolina, Georgia, Alabama, Florida, Mississippi, Louisiana, and Texas by combinations too powerful to be suppressed by the ordinary course of judicial proceedings or by the powers vested in the marshals by law:

Now, therefore, I, Abraham Lincoln, President of the United States, in virtue of the power in me vested by the Constitution and the laws, have thought fit to call forth, and hereby do call forth, the militia of the several States of the Union to the aggregate number of 75,000, in order to suppress said combinations and to cause the laws to be duly executed.

The details for this object will be immediately communicated to the State authorities through the War Department.

I appeal to all loyal citizens to favor, facilitate, and aid this effort to maintain the honor, the integrity, and the existence of our National Union and the perpetuity of popular government and to redress wrongs already long enough endured.

I deem it proper to say that the first service assigned to the forces hereby called forth will probably be to repossess the forts, places, and property which have been seized from the Union; and in every event the utmost care will be observed, consistently with the objects aforesaid, to avoid any devastation, any destruction of or interference with property, or any disturbance of peaceful citizens in any part of the country.

And I hereby command the persons composing the combinations aforesaid to disperse and retire peaceably to their respective abodes within twenty days from this date.

Deeming that the present condition of public affairs presents an extraordinary occasion, I do hereby, in virtue of the power in me vested by the Constitution, convene both Houses of Congress. Senators and Representatives are therefore summoned to assemble at their respective chambers at 12 o'clock noon on Thursday, the 4th day of July next, then and there to consider and determine such measures as, in their wisdoms, the public safety and interest may seem to demand.

In witness whereof I have hereunto set my hand and caused the seal of the United States to be affixed. Done at the city of Washington, this 15th day of April, A.D. 1861, and of the Independence of the United States the eighty-fifth.

Abraham Lincoln

By the President:

William H. Seward, Secretary of State

EXERCISES FOR LESSON IV-8

Interpreting Evidence in Documents

1. Examine the Preamble to the Constitution of the CSA. Compare it to the Preamble of the Constitution of the USA. Then answer these questions:
   a. What is the main difference between the two Preambles?
   b. What two different views of the powers of state governments in the Federal Union are revealed in the two Preambles?
   c. What do the differences in the two Preambles tell us about one of the causes of the Civil War?
2. Review President Buchanan's Message to Congress to find answers to the following questions.
   a. What critical constitutional issue faced President Buchanan?
   b. According to President Buchanan, what constitutional powers and duties did he possess for dealing with the critical issues facing him?

   c. What did President Buchanan propose should be done to settle the critical constitutional issue facing him? Why?

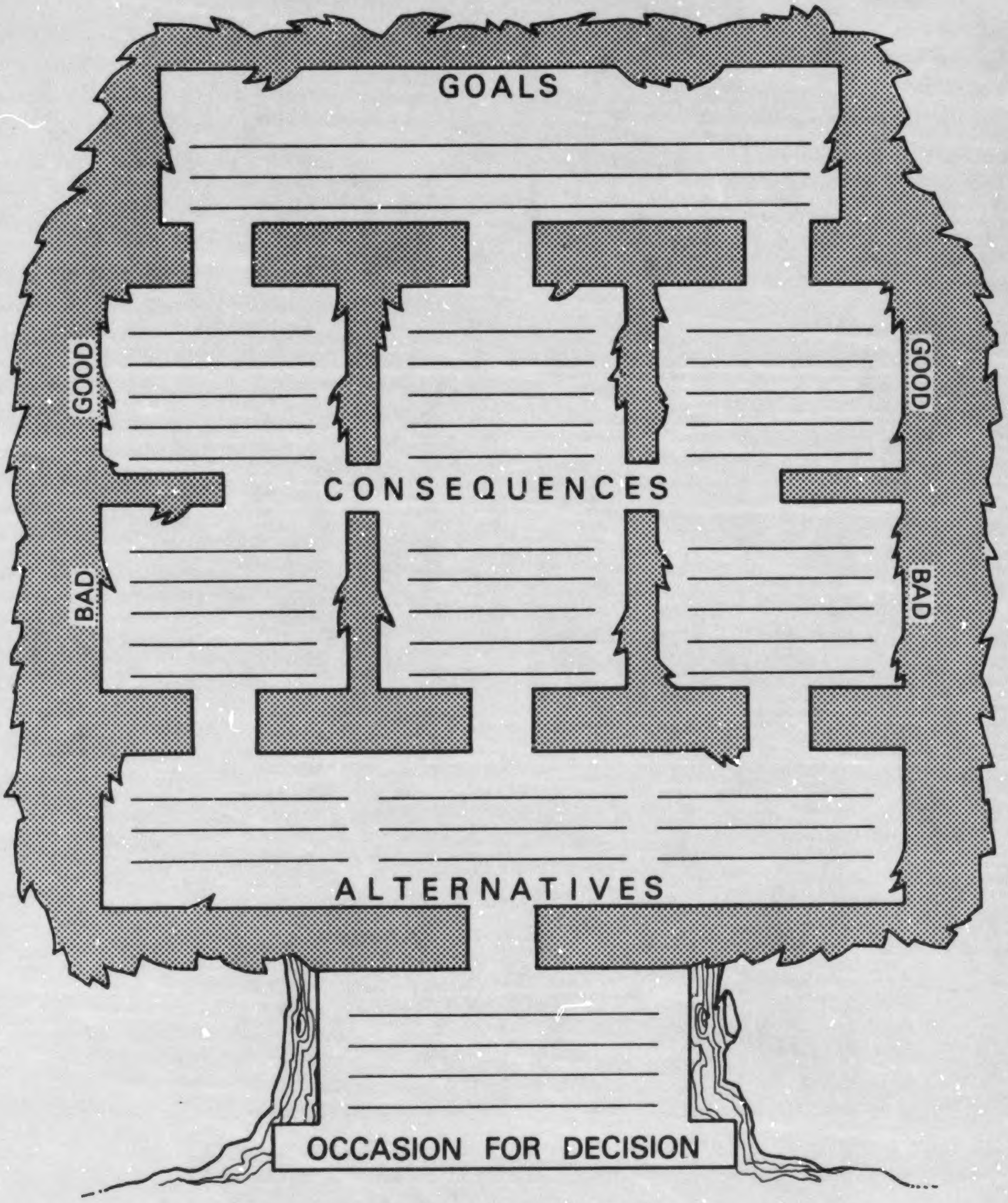
3. Review President Lincoln's First Inaugural Address to find answers to these questions.
   a. What critical issues faced Abraham Lincoln as he entered the presidency?
   b. According to President Lincoln, what constitutional powers and duties did he posses in dealing with the critical issue facing him? Why?
   c. What did President Lincoln propose should be done to settle the critical constitutional issue facing him? Why?
4. Review President Lincoln's Proclamation of April 15, 1861, to find answers to these questions.
   a. The President's Proclamation focused on what main idea?
   b. Why did the President take the actions described in his Proclamation?
   c. Were the President's actions in accordance with the Constitution? Or did they violate it?

Comparing the Decisions of Buchanan and Lincoln

Use the decision tree on page 231 to help you answer the following questions.

1. a. What occasion to make a major decision faced President Buchanan in December 1860?
   b. What occasion to make a major decision faced President Lincoln in March 1861?
   c. Explain the similarities and differences inherent in the respective occasions for decision the two Presidents faced?
2. a. What alternatives did Buchanan identify?
   b. What alternatives did Lincoln identify?
   c. List the similarities and differences Buchanan and Lincoln perceived in the alternatives they identified.
3. a. Which alternative did Buchanan choose? Why?
   b. Which alternative did Lincoln choose? Why?
   c. Compare the choices of Buchanan and Lincoln. Explain how the choices and their consequences are similar or different.
4. a. What is your judgment of Buchanan's decision? Why?
   b. What is your judgment of Lincoln's decision? Why?

DECISION TREE


GOALS
GOOD
GOOD
CONSEQUENCES
BAD
BAD
ALTERNATIVES
OCCASION FOR DECISION

The decision-tree device was developed by Roger LaRaus and Richard C. Remy and is used with their permission.

IV-9. PATHWAY TO JUDGMENT *NEAR V. MINNESOTA* (1931)

LESSON PLAN AND NOTES FOR TEACHERS

Preview of Main Points

In the case of *Near v. Minnesota,* the U.S. Supreme Court for the first time ruled that states must not abridge the First Amendment's guarantee of freedom of the press. The case is used here to illustrate to students the path a case may follow to the Supreme Court. It begins at the county court level, goes to the Minnesota Supreme Court, back to the county court, and then back once more to the state's highest court. From there it goes to the U.S. Supreme Court. The lesson provides a detailed look not available in textbooks about how major cases reach the Supreme Court.

Connection to Textbooks

This lesson could be used to supplement government textbook material on the judicial process and the Supreme Court and with material on civil liberties. In addition, the lesson illustrates the federal nature of our system in two ways: (1) the U.S. Supreme Court ruled a state law unconstitutional and (2) the *Near* case progressed through a state court system before being finally settled in a national court.

The lesson could supplement American history textbook discussions about social and political issues of the period between World Wars I and II.

Objectives

Students are expected to:

1. Explain the circumstances leading up to *Near v. Minnesota.*
2. Identify the main participants and constitutional issue in *Near v. Minnesota.*
3. Identify the steps that the case followed through the two court systems.
4. Explain the interests of third parties in the case.
5. Explain the relationship of the federal and state court systems as revealed in this case.
6. Explain the significance of the Supreme Court's decision with regard to freedom of the press.
7. Practice skills in reading diagrams relevant to the case study.
8. Develop a greater understanding of the process through which major cases reach the Supreme Court.

Suggestions for Teaching the Lesson

This is a case study designed to provide students with a detailed look at the process through which major cases reach the U.S. Supreme Court. Use questions at the end of the lesson to help students comprehend and analyze the facts and ideas of the case.

Opening the Lesson

- Explain to students how this lesson is connected to their textbook materials and inform them about the main points of the lesson.
- Tell students that the purpose of the lesson is to show how major cases reach the U.S. Supreme Court.

Developing the Lesson

- Have students read the case study.
- Ask them to answer the questions about reviewing facts and ideas. You might wish to check student comprehension of the case by conducting a discussion of these questions.
- Move to a consideration of the interpreting evidence questions. Have students study the diagram about "Roads to the Supreme Court" and answer the questions about it.
- Conduct a discussion of the questions about interpreting evidence.

Concluding the Lesson

- Tell students that one popular saying is "Justice delayed is justice denied." Ask how that saying might apply to the *Near* case. Ask students if they believe it is a good idea to provide for more than one appeal in our judicial system. Finally, ask students to help formulate a list of attributes associated with taking a case all the way to the Supreme Court (e.g. a real conflict between parties, time and money, a determination to win, expert legal help, etc.).
- Note: On page 235 the discussion of the arguments of Near's counsel and the discussion of the Supreme Court's opinion both indicate that someone should—or at least could—be tried for libel for defaming a politician or other public person. *New York Times v. Sullivan* (1964) substantially altered this view of the law. Today a public official can win a libel suit **only** if the official can **prove** that the newspaper **knowingly** published something that was false, or published a libel with "reckless disregard to the truth." This decision is based on the belief that the Constitution should allow the widest possible latitude for the criticism of government officials. The Court believed that newspapers should not be afraid to print something because they **might be** wrong. Otherwise, many important public issues would never be discussed by the media. The Court declared in *New York Times v. Sullivan* that the First Amendment should be interpreted "against the background of a profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open, and that it may well include vehement, caustic, and sometimes unpleasantly sharp attacks on government and public officials."

Suggested Reading

Friendly, Fred W. *Minnesota Rag.* New York: Random House, 1981. This book is a case study of *Near v. Minnesota.* It gives the behind-the-scenes story of Minnesota's attempts to enforce a "gag rule" in closing down a "yellow sheet," the *Saturday Press.* The book follows the case step-by-step through the Minnesota courts and on to the U.S. Supreme Court. It discusses the significance of the case as a precedent for future Supreme Court decisions that built a tradition of no prior restraint on the American press.

Murphy, Paul L. "*Near v. Minnesota* in the Context of Historical Developments." *Minnesota Law Review* 66 (November 1981): 95-160. This article discusses the historical importance of *Near v. Minnesota.* It would be useful for teachers.

IV-9. PATHWAY TO JUDGMENT: *NEAR V. MINNESOTA* (1931)

The Supreme Court is very busy. The Court receives nearly 5,000 requests a year to review the decisions of lower courts. Each year the Court accepts about 450 of the requests. However, less than 200 of these cases receive full hearings and written opinions from the Court. Only a small number of cases receiving full review involve the most basic constitutional questions. The outcome of these few cases may shape the course of American life for generations.

Where do these major cases come from? How does a dispute whose settlement could shape the meaning of the Constitution reach the Supreme Court? What pathway leads to Supreme Court review?

This lesson describes how one major case reached the Supreme Court. The case, *Near v. Minnesota,* involved a small newspaper widely recognized as a scandal sheet, a future governor of Minnesota, two publishers—one a millionaire and the other a pauper—and the First Amendment to the Constitution.

The lesson illustrates common characteristics shared by major cases heard by the Supreme Court.

1. Major cases involve basic constitutional questions affecting the whole nation.
2. Major cases involve real conflicts between two parties over specific issues or problems.
3. Resolving major cases may take several years from the time conflicts first arise to the time the Supreme Court issues decisions.
4. Major cases, with rare exception, are appealed from the decision of a lower court.
5. Major cases involve various types of people. Some are model citizens acting from a sense of civic duty, while others are less reputable characters. As one justice put it, some of our most treasured safeguards in the Bill of Rights have been "forged in controversies involving not very nice people."

Background: A "Gag Law" Is Passed

The Minnesota legislature passed the Public Nuisance Law of 1925 for one purpose: to close down John Morrison's *Rip-Saw,* a newspaper notorious for its vicious attacks on public officials. The law permitted a single judge acting without a jury to stop the publication of a newspaper or magazine if he found it "obscene, lewd, and lascivious. . .or malicious, scandalous and defamatory." This vague law gave judges great power over the press. Yet, many major state newspapers supported the law. They thought the suppression of scandalous papers like the *Rip-Saw* would protect the rights of more reasonable publishers.

The Public Nuisance Law became known as a "gag law." The law authorized a form of censorship called **prior restraint.** Prior restraint involves government officials restricting a newspaper or magazine in advance from publishing materials of which they disapprove.

The Near Case Begins

In the 1920s, Minneapolis became a crossroads in the illegal Canadian liquor trade. Ordinary, law-abiding citizens concerned themselves with their private affairs, leaving law enforcement and civic administration to corrupt politicians and gangsters. Numerous gang killings accompanied gambling and trade in illegal booze. Respectable newspapers refused to investigate the association between the law-breakers and law enforcement officials.

In 1927, Jay Near and Howard Guilford established the *Saturday Press* in Minneapolis. Near, an experienced journalist, was known for his bigotry against Catholics, blacks, Jews, and organized labor. He specialized in reporting scandals in a sensational manner.

From its first issue, the *Saturday Press* hammered away at supposed ties between gangsters and police in a series of sensational stories. The paper proved especially tough on city and county government officials.

The *Saturday Press* attacked, among others, the county prosecutor Floyd Olson, who later became a three-term Minnesota governor. The *Saturday Press* called him "Jew lover" Olson. It accused him of dragging his feet in the investigation of gangland pursuits. Olson was enraged. On November 21, 1927, he filed a complaint under the Public Nuisance Law of 1925 with the country district judge. Olson charged that the *Saturday Press* had defamed various politicians, the county grand jury, and the entire Jewish community.

The county judge issued a temporary restraining order against the *Saturday Press* prohibiting publication of the paper under the Public Nuisance Law of 1925. Near and Guilford obeyed the order but claimed it was unconstitutional. The county judge rejected their claim but did certify they could appeal the restraining order. In most states, such an appeal would go first to a state appeals court and then to a state supreme court if necessary. Under Minnesota law the case moved directly to the Minnesota Supreme Court.

The Case Moves Through the Minnesota Courts

Near and Guilford had little money to pursue their legal battle. The temporary restraining order cut off their source of income because it kept their paper off the streets. The publishers finally got some legal help from a local attorney who believed in freedom of the press.

The Minnesota Supreme Court. On April 28, 1928—more than three months after the issuing of the temporary restraining order—the Minnesota Supreme Court heard the appeal.

The publishers argued that the Public Nusiance Law violated the entire concept of freedom of the press guaranteed by the First Amendment. That Amendment says: "Congress shall make no law...abridging the freedom...of the press." They also argued that it violated the right of free press guarantee written into the Minnesota Constitution.

The Supreme Court ruled the Public Nuisance Law did not violate the Minnesota Constitution. The Court compared the *Saturday Press* to "houses of prostitution or noxious weeds." It asserted that the legislature had the power to do away with such nuisances. In Minnesota, the court argued, no one can stifle the truthful voice of the press, but the constitution's drafters never intended it to protect "malice, scandal and defamation." The Minnesota Supreme Court returned the case to the county court, which was to decide whether or not to make the temporary restraining order permanent.

Back to the County Court. On October 10, 1928, the county judge held hearings to determine whether to make the temporary restraining order permanent. The hearings were a mere formality. Near's attorney used the same arguments as before. This time, however, two lawyers from the *Chicago Tribune* joined him. Prosecutor Olson simply offered nine copies of the *Saturday Press* as evidence. The judge accepted the State Supreme Court's conclusion that the Public Nuisance Law was constitutional, and in January the restraining order became permanent. Over a year and three legal proceedings later, the Minnesota "gag law" finally closed down the *Saturday Press* for good.

An Important Ally. While these legal maneuverings occurred, two things happened. First, Howard Guilford, Near's partner, withdrew from the legal battle. Guilford, impatient with the slow pace of the functioning of the legal system, sold his interest in the paper to Near.

More importantly, Near recruited a rich and powerful ally. Robert McCormick, the publisher of the *Chicago Tribune,* sympathized with Near for a number of reasons. Like Near, the bigoted McCormick disliked blacks, Jews, and other minorities. McCromick had also fought numerous legal battles over articles published in his paper. These struggles had taught McCormick the importance of defending the First Amendment. He did not want the Illinois legislature to copy the Minnesota "gag law." Thus, the interests of the rich publisher in Chicago and those of the poor scandal monger in Minnesota coincided. Near wanted his little paper back in business; McCormick wanted a free press.

McCormick committed the *Tribune's* full resources to the case. His lawyers represented Near in future legal proceedings.

Final Steps in Minnesota. McCormick's lawyers did not expect to win in the county court. They were aiming for the U.S. Supreme Court. But the U.S. Supreme court would only take a case from a state's highest court. So once again, Near and his attorneys appealed to the Minnesota Supreme Court. This time they appealed the issuing of the permanent injunction. They had little doubt that the Minnesota Supreme Court would uphold the injunction, since it had already upheld the "gag law."

As expected, the Minnesota Supreme Court reasserted that the *Saturday Press* was a public nuisance. The justices did say the defendants could publish a newpaper "in harmony with the public welfare. . . ." Yet, such a paper would hardly be the *Saturday Press.*

One Additional Ally. Before going to the Supreme Court, McCormick sought to strengthen Near's case by gaining the formal support of the American Newspaper Publishers Association (ANPA). ANPA members represented more than 250 newspapers across the country. On April 24, 1930, ANPA came out in support of Near. The Association made a public statement declaring the Minnesota law "one of the gravest assaults upon the liberties of the people that has been attempted since the adoption of the Constitution."

The ANPA statement stimulated many leading newspapers to print editorials attacking the Minnesota law. *The New York Times,* for example, called the statute "a vicious law."

So the stage was finally set for Near, with McCormick's help, to bring his case to the U.S. Supreme Court. Under federal law the Court may review state supreme court decisions where federal or constitutional rights are at issue. Although the Court does not review all such cases, the Court usually reviews these cases when they involve a "substantial federal question." In *Near v. Minnesota* a very substantial issue—the meaning of the First Amendment—was at stake. The Court's decision to hear the case surprised no one.

On April 26, 1930, twenty-six months after the first restraining order against Near, the U.S. Supreme Court notified the Minnesota Supreme Court that it would hear the case of *Near v. Minnesota.*

The Supreme Court Decides

For the first time in its history, the Supreme Court was to rule on the constitutionality of prior restraint. The

Court scheduled arguments in the case for January 30, 1931. Neither Jay Near nor "Colonel" McCormick were to be present, but McCormick's attorney was ready, as were attorneys for the State of Minnesota.

Arguments. Near's attorney claimed that the Minnesota Public Nuisance Law allowed prior restraint and thus violated the First and Fourteenth Amendments. He argued that the Constitution guaranteed freedom of the press as a fundamental right. No state could take the right away through prior restraint.

Near's attorney admitted that the *Saturday Press* article was "defamatory" (highly critical of government officials). But, he added, "So long as men do evil, so long will newpapers publish defamation." The attorney argued that, "Every person does have a constitutional right to publish malicious, scandalous and defamatory matter, though untrue and with bad motives, and for unjustifiable ends." Such a person could be punished afterwards. The remedy, then, was not censorship of an offending newspaper by prior restraint. Rather, the state should bring specific criminal charges against such a newspaper after it published the material.

Minnesota argued that the Public Nuisance law was constitutional and that the injunction against the *Saturday Press* was not prior restraint. The injunction was issued only after the *Saturday Press* had attacked the reputations of public officials. Thus, the law punished an offense already committed. The Constitution was designed to protect individual freedoms, not serve the purposes of wrongdoers, such as Near and his scandalous *Saturday Press*.

The Decision. On June 1, 1931, the Supreme Court ruled in favor of Near by a vote of 5 to 4. The Court held that the Minnesota law was a prior restraint on the press which violated the First Amendment and the "due process" clause of the Fourteenth Amendment.

Chief Justice Charles Evans Hughes, in the majority opinion, declared the Minnesota law "the essence of censorship." He stated that libel laws, not newspaper closures, should counter false charges and character assassinations. He emphasized that the right to criticize government officials was one of the foundations of the American nation.

Jay Near had lost four times in the Minnesota courts. But he had won his final battle before the U.S. Supreme Court.

Aftermath

Jay Near was triumphant when he learned of the Court's verdict. In October 1932, Near began to publish the *Saturday Press* again. The paper, however, did not survive, and in April 1936, Near died in obscurity at the age of 62.

The Court's ruling also pleased Colonel McCormick. He wrote Chief Justice Hughes: "I think your decision in the Gag Law case will forever remain one of the buttresses of free government."

As a result of *Near v. Minnesota,* the United States has built a tradition against prior restraints unlike any other in the world. This tradition has helped keep the free press from censorship by government officials merely because it is critical of them.

In 1971, the Supreme Court relied on the "Near" precedent in the "Pentagon Papers" case (*New York Times v. United States*). In that case the federal government attempted to stop *The New York Times* from publishing secret documents describing the history of the United States' involvement in the Vietnam War. The Court ruled against the government and permitted publication of the documents.

EXERCISES FOR LESSON IV-9

Reviewing Facts and Ideas

1. Match the items in Column **B** with the names in Column **A.**

A

____ 1. John Morrison
____ 2. Jay M. Near
____ 3. Floyd Olson
____ 4. Howard Guilford
____ 5. Robert McCormick
____ 6. Charles Evans Hughes

B

A. Publisher whose newspaper was suppressed by Minnesota law
B. Jay Near's partner
C. Chief Justice of the U.S. Supreme Court
D. Publisher of the *Rip-Saw*
E. Publisher of the *Chicago Tribune*
F. County prosecutor who filed complaint against the *Saturday Press*

2. **True or False?** (Be prepared to explain your choices.)

   a. The First Amendment protects prior restraint.

   TRUE FALSE

   b. The Minnesota Public Nuisance Law authorized judges to engage in prior restraint.

   TRUE FALSE

   c. Jay Near claimed the Minnesota law violated the Fifth Amendment.

   TRUE FALSE

   d. The Minnesota Supreme Court ruled the Public Nuisance Law violated the U.S. Constitution.

   TRUE FALSE

   e. A county judge issued the temporary restraining order against the *Saturday Press.*

   TRUE FALSE

   f. The U.S. Supreme Court upheld the Minnesota Law as constitutional.

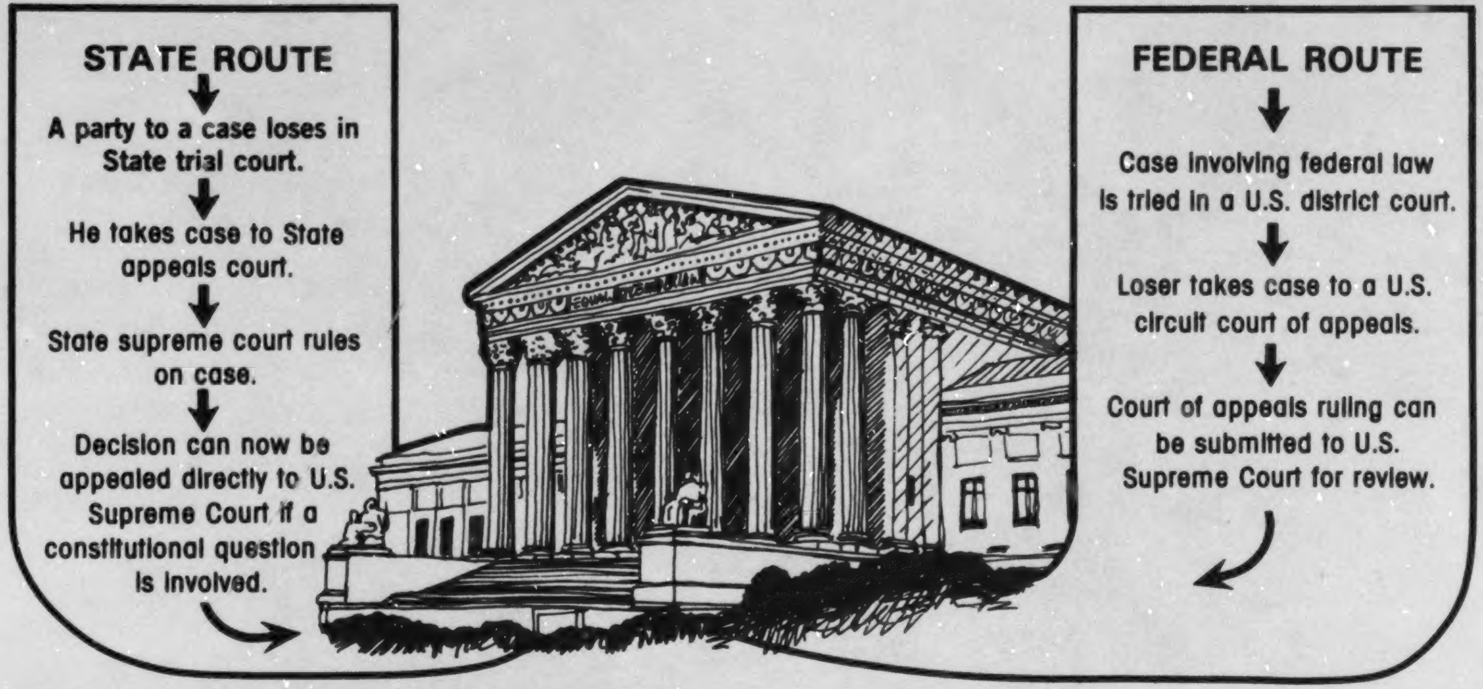
   TRUE FALSE

3. What led county prosecutor Olson to file a complaint against the *Saturday Press*?
4. What action did the county district judge take in response to Olson's complaint? What reason did the judge give for his action?
5. Why did Robert McCormick express interest in the case?
6. What arguments did the two sides present before the U.S. Supreme Court?
7. What did the Court decide?
8. What reasons did the majority give for their decision?
9. What has been the significance of *Near v. Minnesota*?

Interpreting Evidence

Study the diagram on the next page.

1. What is the main idea of the diagram?
2. Which route to the Supreme Court did the *Near* case follow? Why did the case not take the other route?
3. Which step did the *Near* case skip?
4. Near lost twice in the Minnesota Supreme Court. What did the Court rule each time?
5. What was the vote in the Supreme Court?



STATE ROUTE

A party to a case loses in State trial court.

He takes case to State appeals court.

State supreme court rules on case.

Decision can now be appealed directly to U.S. Supreme Court if a constitutional question is involved.

FEDERAL ROUTE

Case involving federal law is tried in a U.S. district court.

Loser takes case to a U.S. circuit court of appeals.

Court of appeals ruling can be submitted to U.S. Supreme Court for review.

Two Main Roads to the Supreme Court

IV-10. OVERRULING PRECEDENT: THE FLAG SALUTE CASES

LESSON PLAN AND NOTES FOR TEACHERS

Preview of Main Points

This lesson describes the cases of *Minersville School District v. Gobitis* (1940) and *West Virginia State Board of Education v. Barnette* (1943). These cases illustrate how and why the Supreme Court overruled itself and changed the meaning of the Constitution in a short period of time. In *Gobitis* the Court ruled that school children must salute the flag; in *Barnette* it ruled they could not be forced to pledge allegiance to the flag.

Connection to Textbooks

This lesson can be used to strengthen government textbook discussions of the powers of the Supreme Court or with U.S. history or government texts to supplement their coverage of the informal development of the Constitution.

Objectives

Students are expected to:

1. Comprehend the function of the doctrine of *stare decisis* in decision-making.
2. Identify the constitutional issue involved in the 1940 *Gobitis* and 1943 *Barnette* decisions.
3. Explain how and why the Supreme Court decided to overrule the precedent set in the *Gobitis* decision.
4. Make a judgment about the Court's power to overrule precedent and change its mind when dealing with constitutional issues.

Suggestions for Teaching the Lesson

This lesson can be used as an "in-depth" study of the powers of the Supreme Court or the informal development of the Constitution.

Opening the Lesson

- Begin by asking students, "Is a decision by the Supreme Court a permanent decision which can never be changed or reviewed in the future?"
- Then tell students that in 1940 the Supreme Court ruled that school children could be forced to salute the flag in morning exercises, but that in 1943 it said they could not be made to do this.
- Ask students to brainstorm for five minutes, suggesting hypotheses for why the Court changed its position.

Developing the Lesson

- Have students read the case study.
- Conduct a discussion of the questions under "Reviewing Facts and Ideas" and "Interpreting Evidence" to make sure students have understood the main ideas and can interpret them.

Concluding the Lesson

- Use the "fishbowl technique" (explained below) to have students discuss the following questions: Is the inconsistency on the part of the Supreme Court illustrated by these cases desirable? Should the Court be influenced by the press, by law review journals, and by citizen actions?
  1. Break the class into four groups. Each group will spend ten minutes discussing the above questions.
  2. Next the teacher should choose one representative from each group to sit in the middle of the classroom with other students in chairs forming a circle around them. There will be five chairs in the center—one of them empty at the beginning. The students in the fishbowl will then continue the discussion in front of all other students. Anyone who wishes to participate in the discussion may temporarily enter that vacant seat and join in the conversation.

Optional Assignment

- This case study provides students with information they can use to make informed judgments about the Supreme Court's role in interpreting the Constitution.
- Two essay questions which might be assigned to achieve this purpose are:
  1. Some experts believe that the Court was influenced by the reaction of the press, the law review journals, and by violence against Jehovah's Witnesses to overturn *Gobitis*. If this is true, do you approve? Why or why not?
  2. According to Chief Justice Charles Evans Hughes the Constitution is what the judges say it is. How do the flag salute cases support his statement? Do you believe the Court should have this power? Why or why not?

Suggested Reading

Garraty, John A., ed. "The Flag Salute Cases." *Quarrels That Have Shaped the Constitution*, Chapter 15. New York: Harper Torchbooks, 1962. Presents an excellent and readable discussion of the *Gobitis* and *Barnette* cases.

IV-10. OVERRULING PRECEDENT: THE FLAG SALUTE CASES

In deciding cases—and sometimes in determining the meaning of the Constitution—the Supreme Court often follows an informal rule called *stare decisis*, "let the decision stand." *Stare decisis* counsels judges to maintain consistency by following precedents or earlier decisions from similar cases.

There is a practical reason for the doctrine of *stare decisis*. The law needs to be stable. Justice William O. Douglas explained the importance of *stare decisis* this way:

> *Stare decisis* provides some moorings so that men may trade and arrange their affairs with confidence. *Stare decisis* serves to take the [chance]. . .out of law and to give stability to a society. It is a strong tie which the future has to the past.

Stare decisis means Supreme Court justices do not rely solely on the laws and the Constitution when making decisions. They also refer to precedents when deciding cases.

Yet *stare decisis* only serves as guideline, not as a hard and fast rule. The Supreme Court can, and sometimes does, change its mind dramatically.

Some of the most important and controversial of the Court's decisions have come in cases where the Court has overruled itself. From 1810 to the present, the Court has made exceptions to the doctrine of *stare decisis* and overruled itself more than 100 times.

The modern Court has shown itself more likely to change its mind than earlier Courts. More than 75 percent of the Court's reversals of *stare decisis* have occurred since 1900. Prior to 1900 the Court overruled itself only twenty-eight times. The Court is less likely to follow *stare decisis* when dealing with constitutional questions than when interpreting the meaning of laws passed by Congress.

One justice explained the Court's attitude this way: "We are not unmindful of the desirability of continuity of decision in constitutional quesions." However, he added, "when convinced of former error, this Court has never felt constrained to follow precedent."

Sometimes the Court has overruled precedents more than a century old. Other times the Court reverses itself within the space of a few years. What happens in such cases? Why do the justices change their minds?

The flag salute cases, as they came to be called, are good examples of how the Court set a precedent and then overruled itself. The cases involved schools, children, the American flag, and a conflict between religion and political duty.

The First Flag Salute Case

The issue first arose one day in 1936 when Lillian Gobitis, 12, and her brother William, 10, came home from school with news that distressed their parents. They had been expelled from their Minersville, Pennsylvania school for refusing to salute the American flag during the morning patriotic exercises.

The Gobitis family belonged to the Jehovah's Witnesses faith. This religion taught that saluting the flag was like worshipping a graven image (an idol), an offense against God's law.

Lillian and William's parents appealed to the Minersville school board to excuse their children from the flag salute requirement. The board refused. The parents placed the children in a private school. Mr. Gobitis sued to stop the school board from requiring children attending the public schools to salute the flag. Federal district and appellate judges upheld Gobitis' suit. The Minersville school board then appealed to the Supreme Court. The Court heard the case in 1940.

The Constitutional Issue and Precedents. Could the government allow schools to force Jehovah's Witnesses to salute the American flag against their religious beliefs? The Witnesses claimed the Minersville school board's regulation violated their First Amendment right to the "free exercise" of religion.

There were no real precedents for judging the case. Three times before, and as recently as 1939, the Court had upheld flag salute requirements with brief, unsigned opinions. Thus, the Court had never fully dealt with the issue.

Times were changing. It seemed likely that the United States would soon enter World War II, and exhibitions of loyalty and patriotism were gaining more importance. The Court agreed "to give the matter full consideration," titling the case *Minersville School District v. Gobitis*.

The Court's Decision. In 1940, the Court voted 8 to 1 to uphold the flag salute requirement. Justice Felix Frankfurter wrote the majority opinion. He argued that religious liberty had to give way to state authority as long as the state did not directly promote or restrict religion. As it met this requirement, the school board's flag salute requirement was constitutional.

Frankfurter called the controversy a "tragic issue" which defied the Court to find a clear cut solution. However, he argued that national unity is the basis for national security. If a local school board believed that a compulsory flag salute promoted national unity, then the Court should not prevent that school board from requiring the flag salute.

An Important Decision. Justice Harlan Fiske Stone was the lone dissenter in the *Gobitis* case. He chose to consider religious freedom outside the jurisdiction of political authority. Stone argued that when the state attempts to force children to express a belief they do not really hold, it violates their First Amendment rights. Furthermore, he wrote that other ways exist to instill patriotism in students. Within three years, the majority would come to agree with Stone's opposition to the *Gobitis* decision. Here is what happened.

Conditions for Overruling the Gobitis Decision Develop

The *Gobitis* decision established a precedent, but that precedent did not last. Two factors influenced the Court's determination to overrule *Gobitis*: public and the legal community reactions, and changes in the membership of the Court.

Reaction to the Decision. To Justice Frankfurter's surprise, a substantial public outburst greeted the *Gobitis* decision. More than 170 leading newspapers opposed the decision. The stance of the St. Louis *Post-Dispatch* typified the nation-wide criticism. "We think this decision of the United States Supreme Court is dead wrong," declared an editorial.

Members of the legal profession, exerting influence on the justices, strongly condemned the decision. Articles in special journals read by legal scholars opposed the decision nearly unanimously.

At the same time, the decision sparked a wave of violent patriotism. Jackson, Mississippi, banned Jehovah's Witnesses. Adamant patriots burned a Witness meeting hall in Maine. Others beat a lawyer trying to represent besieged Witnesses and drove him out of Connersville, Indiana. In several states, children of Jehovah's Witnesses families continued to refuse to salute the flag at school. Officials committed them to reformatories as delinquents. It seemed that the Supreme Court's decision prompted citizens to take the enforcement of patriotism into their own hands.

The strong reactions to the decision influenced the thinking of several judges. In 1942 three justices—Hugo L. Black, William O. Douglas, and Frank Murphy—indicated that they had changed their minds about compulsory flag salutes. These three justices dissented in another case involving religious freedom. In their dissent they declared:

> Since we joined in the opinion of the *Gobitis* case, we think this is an appropriate occasion to state that we now believe that it was...wrongly decided.

In the history of the Supreme Court, justices have only indicated a desire to reverse a decision before an actual case comes before them a few times. This unusual statement shows that these three justices believed they had made an error in the *Gobitis* case.

Changes in Court Membership. Over a three-year period the membership of the Court changed. This change proved a second factor leading to the overruling of *Gobitis*. Two new justices, both liberals, replaced conservative justices. The first new member was Robert H. Jackson. Later, Wiley B. Rutledge, known for strong views, favoring freedom of religion, joined the Court. In addition, Justice Stone, who had stood alone against the *Gobitis* decision, became Chief justice. A new point of view prevailed on the Court after these membership changes occurred.

By 1943 five justices, a majority, opposed compulsory flag salutes: Chief Justice Stone, the three justices who had changed their minds, and the newest appointee, Rutledge. In addition, many felt the other new justice, Robert H. Jackson, would also vote against requiring flag salutes.

The Supreme Court, however, does not simply make announcements about the Constitution. It interprets the meaning of the Constitution in assigning verdicts to the real cases it chooses to hear. The opportunity for the Court to reverse the *Gobitis* decision came in 1943 in the case of *West Virginia State Board of Education v. Barnette.*

The Second Flag Salute Case

The *Gobitis* decision encouraged West Virginia, as well as several other states, to require all schools to make the flag salute a regular part of school activities. The West Virginia regulation was strict. Students who refused to salute the flag would be expelled from school. Schools would not readmit them until they agreed to perform the salute. At the same time, the state would consider them "unlawfully absent"—and for this could send them to reformatories and prosecute their parents or guardians. If found guilty, the parents could be fined $50 and sentenced to thirty days in jail. Several West Virginia Jehovah's Witness families, including that of Walter Barnette, sued for an injunction to stop enforcement of this rule. The case eventually came before the Supreme Court.

The Court's Decision. By a 6 to 3 vote, the Supreme Court ruled that the West Virginia flag salute requirement was unconstitutional. Thus, within three years, the Court had dramatically overruled the precedent set in the *Gobitis* case. Justices Stone, Rutledge, Douglas, Black, Murphy, and Jackson voted to overrule *Gobitis.*

Justice Jackson wrote the majority opinion with Frankfurter, now in the minority, dissenting. Jackson's opinion is widely regarded as one of the strongest, most eloquent ever made in the history of the Supreme Court.

Jackson said that public officials could, of course, take steps to promote national unity. However, he argued "the problem is whether under our Constitution compulsion as here employed is a permissible means for its achievement." The majority answered no. The First Amendment prohibited public officials from forcing students to salute the flag against their religious beliefs.

"Compulsory unification of opinion," Jackson continued, "achieves only the unanimity of the graveyard." In fact, Jackson said, "the frank purpose of the Bill of Rights was to withdraw freedom of speech, press, religion, and other basic rights from the reach of legislatures and popular majorities."

Jackson concluded with one of the most famous paragraphs in the annals of the Supreme Court:

> If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion or other matters of opinion, or force citizens to confess by word or act of faith therein. If there are any circumstances which permit an exception, they do not now occur to us.

In dissent, Frankfurter maintained that the state school board had the constitutional authority to require that public school children salute the flag. He argued that the Court had overstepped its bounds in placing its judgment above that of local legislatures and school boards in determining local policy on such matters.

Frankfurter especially objected to Jackson's argument that questions associated with the Bill of Rights should be beyond the "reach" of local officials and legislatures. Frankfurter believed judges had a duty to respect and give in to the discretion of legislatures and the laws they passed.

Aftermath of the Barnette Case

The *Barnette* case set a new precedent that the legal system has followed to this day. Federal courts applying the *Barnette* precedent have turned back several attempts by officials to establish new flag salute requirements.

For example, a recent New Jersey law required students not taking part in the flag salute ceremony simply to stand at "respectful attention." In 1977 both a federal district court and the Court of Appeals ruled the law violated the limits on flag salute requirements spelled out in the 1943 *Barnette* case.

The flag salute cases show how the Supreme Court can change its mind about the meaning of the Constitution. Application of the doctrine of *stare decisis* and the use of precedents create stability in the law. However, allowing for exceptions to *stare decisis* and overruling precedents are ways the Court adapts the Constitution to changing conditions.

EXERCISES FOR LESSON IV-10

Reviewing Facts and Ideas

1. What does *stare decisis* mean?
2. Does the Supreme Court always follow the doctrine of *stare decisis*? Explain your answer.
3. Describe the events leading to the *Gobitis* case.
4. State the issue at stake in the *Gobitis* and *Barnette* cases.
5. What did the Court decide in the *Gobitis* case? What reasons did the majority give for this decision?
6. Which justice dissented from the *Gobitis* decision? Why?
7. How did the press, legal profession, and public react to the *Gobitis* decision?
8. Name the three justices influenced by the reaction to the *Gobitis* decision.
9. What change in membership on the Court took place between 1940 and 1943? Which five justices were clearly ready to overrule the *Gobitis* decision?
10. What did the Court decide in the *Barnette* case?
11. Has the *Barnette* case stood as precedent?
12. The flag salute cases illustrate that judges make their decisions according to the "letter of the law" only. Explain your answer.

TRUE FALSE

Interpreting Evidence

1. Refer to the statement by Justice Douglas on page 239.
   a. What is the main idea of this statement?
   b. Does Justice Douglas think *stare decisis* is useful? Explain.
2. Refer to the quotation from Justice Jackson's opinion in the *Barnette* case on this page.
   a. Does Jackson's statement go beyond the specific issue at question in the *Barnette* case? Explain.
   b. Why would Jackson's opinion be hailed as an important statement about limited government?

IV-11. THE COURT'S USE OF DISSENT

LESSON PLAN AND NOTES FOR TEACHERS

Preview of Main Points

This lesson deals with the importance and purposes of dissenting opinions by Justices of the Supreme Court. Justice Hugo Black's dissent in *Betts v. Brady,* 1942 is used as an example of a responsible dissent that became a majority ruling, when it was confirmed by the *Gideon v. Wainwright* decision of 1963. The lesson also illustrates judicial interpretation of the Constitution.

Connection to Textbooks

The uses of dissenting opinions are not discussed in typical American government and history textbooks. Most history textbooks make little or no mention of any dissenting opinions. This lesson can be used to supplement American government and civics textbook chapters on federal and state courts. It can be used with American history textbook sections about the Warren Court.

Objectives

Students are expected to:

1. Know the purposes of a dissenting opinion.
2. Know that a responsible dissenting opinion may, in time, become a majority decision.
3. Note similarities and differences in the *Betts* case and the *Gideon* case.
4. Identify the constitutional issues of the *Betts* and *Gideon* cases.
5. Explain the constitutional bases of the *Betts* and *Gideon* cases.
6. Explain the use of a dissenting opinion in the overturning of the *Betts* decision in the *Gideon* case.

Suggestions for Teaching the Lesson

Opening the Lesson

- Ask students to speculate about the meaning and uses of a dissenting opinion.
- Preview the main points of the lesson for students.

Developing the Lesson

- Have students read each of the three sections of this lesson. They should respond to the review questions at the end of each section before moving on to the next section.
- You might have students discuss each section of the lesson. You may wish to have students discuss these section review questions in small groups of five or six students. Or you might wish to hold a discussion involving all class members. An alternative is to have students use the review questions only as a "self-check" about their understanding of each section of the lesson.

Concluding the Lesson

- Have students complete the worksheet at the end of the lesson. This is an application lesson that tests student comprehension of the idea of a dissenting opinion. It also checks their understanding of how a dissenting opinion in one case (*Betts v. Brady*) influenced a majority opinion in a later case (*Gideon v. Wainwright*).

- You might have students hand in the worksheet and grade it as a formal test. Or you might have students exchange worksheets and evaluate one another's responses. Another alternative is to conduct a class discussion about the items on the worksheet.

Suggested Reading

Barth, Alan. *Prophets With Honor: Great Dissents and Great Dissenters in the Supreme Court.* New York: Random House, Vintage Books, 1974. This book is an interesting and lively account of the uses of dissenting opinions. Dramatic cases and personalities are featured.

Lewis Anthony. *Gideon's Trumpet.* New York: Bantam Books, 1964. This is the story of the case of *Gideon v. Wainwright.*

Suggested Films

Justice Under Law: The Gideon Case

In the *Gideon* case, the defendant was tried and convicted without legal counsel. The film shows how Gideon, in prison, communicated with state and federal legislative bodies to obtain legal representation, and how the Bill of Rights and Oliver Wendell Holmes' interpretation guided the Supreme Court decision in the case. From *Our Living Bill of Rights* series, Encyclopedia Britannica Educational Corp., 1966, 22 minutes.

The Right to Legal Counsel

The 1963 *Gideon v. Wainwright* decision requiring that indigent defendants accused of serious crimes must be offered counsel overruled an earlier decision in *Betts v. Brady.* When tried with adequate legal representation, the defendant, Gideon, was acquitted. BFA Educational Media, 1968, 15 minutes.

IV-11. THE COURT'S USE OF DISSENT

Have you ever argued with your friends? Of course, you have; we all have! Have you ever found yourself in a situation where all of your friends have felt one way about something and you, the only one with a different view, haven't been able to convince anyone else that you have been right? You were a dissenter. To dissent is to disagree.

Have you ever wanted to say "I told you so" when, later on, the majority accepted your views, even though everyone else had disagreed with you earlier? If so, the fact that the others accepted your dissenting opinion as correct satisfied you. You were vindicated.

One or more justices often disagree with the majority of the Court on how to decide a case. Justices who disagree with the majority are dissenters. They interpret the law, as it applies to a case, in a way that differs from the majority's interpretation.

A justice who disagrees with the verdict in a case usually writes a dissenting opinion. There is no requirement that a dissent be accompanied by an opinion. However, most dissenting justices write an opinion to explain why they disagree with the majority decision.

Why do dissenters take the time and trouble to write opinions, which will **not** be the judgment on the case? What purpose does a dissenting opinion serve? What are the uses of dissent in the work of the Court?

What is a Dissenting Opinion?

A dissenting opinion argues against the majority decision in a case before the Supreme Court. For example, in 1896 the Court approved a state law requiring trains to provide "separate but equal" facilities for black and white passengers (*Plessy v. Ferguson*). Justice John M. Harlan, of Kentucky, wrote a dissenting opinion against the Court's decision in the *Plessy* case. He argued that the majority of the Court wrongly ruled in favor of segregation of blacks and whites in their use of public facilities. He wrote that "the Constitution is color-blind, and neither knows nor tolerates classes among citizens."

A dissenting opinion is not an attempt to change the minds of the Court's majority. The Court's final decision has been made before the writing of the dissenting opinion. For instance, Justice Harlan did not write his dissent in the *Plessy* case to change the decision in that 1896 case. Rather, Justice Harlan, like other dissenters on the Court, was trying to persuade other Americans, contemporaries of the Court, that the majority had decided wrongly.

A dissenting opinion attempts to raise doubts in the minds of citizens about the majority's decision in a particular case. The dissenter hopes eventually to arouse public opinion against the majority opinion of the Court. Justice Harlan, for example, wanted to cast a shadow of doubt and uneasiness over the Court's decision in favor of racial segregation. He hoped to stimulate criticisms of the Court's decision, which might sustain efforts to overturn it someday.

The ultimate purpose of a dissenting opinion is to shape future decisions. The dissenting judge hopes that, in the future, the Court will reconsider the majority opinion and overrule it. Thus, the dissenter hopes that his opinion will someday become the basis for a majority opinion in a similar case. Justice Charles Evans Hughes wrote: "A dissent in a court of last resort is an appeal to the brooding spirit of the law, to the intelligence of a future day, when a later decision may possibly correct the error into which the dissenting judge believes the court to have been betrayed."

The dissenter prods the conscience of the country and tries to lead the Court to correct what the dissenter views as an error. For example, Justice Harlan's 1896 dissent became the majority opinion of the Court in 1954. In *Brown v. Board of Education,* the Court unanimously rejected the "separate but equal" doctrine of *Plessy.*

The overruling of a majority opinion, in favor of an earlier dissent, rarely occurs. For example, Justice Oliver Wendell Holmes, known as the "Great Dissenter," wrote 173 dissenting opinions during thirty years on the Supreme Court. Few of Justice Holmes' dissenting opinions sparked reversals of court decisions.

The Supreme Court does not readily admit errors and overrule past decisions. The principle of *stare decisis* ("Let the decision stand") has a powerful influence on the Court. Justices tend to accept precedents established in earlier Court decisions as guides in later cases.

One Supreme Court justice, who exemplifies the importance of a dissenter, is Hugo L. Black. Justice Black served on the Supreme Court for thirty-four years. Obviously, he participated in making many decisions during his long tenure on the Court and witnessed many changes in our national life. President Franklin D. Roosevelt nominated him for the bench, and he resigned in 1971, when President Richard Nixon was in the White House.

Throughout, Justice Black held strongly to his views of fairness, even when those views diverged from the majority concerns of Court opinion.

Black found disagreements stimulating. He once wrote in a letter to a friend, "There is no earthly reason why you and I should think less of one another because we happen to disagree. Disagreements are the life of progress." He maintained this viewpoint serving on the Court where he gained a reputation as a great dissenter.

A zealous champion of individual and minority group rights, Black stated opinions emphasizing support for the hapless and the helpless. He left a lasting mark upon the Supreme Court and the nation. The Court finally accepted some of his dissenting opinions as majority decisions during his years of service. This must have given him great personal satisfaction.

An example from Justice Black's career shows the importance of dissenting opinions. Black's dissenting opinion in one case (*Betts v. Brady*, 1942) became the majority opinion in another (*Gideon v. Wainwright*, 1963).

EXERCISE FOR LESSON IV-11

Reviewing Main Ideas and Facts

1. What is a dissenting opinion?
2. What purpose do dissenting opinions serve?
3. Why are dissenting opinions important?
4. Why was Justice Black a good example of a dissenter on the Supreme Court?

Justice Black's Dissent (*Betts v. Brady*, 1942)

Smith Betts, a forty-three year old unemployed man, was indicted for robbing a store in Carroll County, Maryland on Christmas Eve in 1938. He pleaded "not guilty" and, because he could not afford to pay for a lawyer himself, he asked the judge to appoint a lawyer to defend him. The judge refused to do so, as Courts commonly appointed counsel only in cases involving the death penalty. Smith Betts was found guilty and sentenced to eight years in the Maryland penitentiary.

The Constitutional Issues. "I have not had a fair trial," protested Betts. He aruged that the Sixth Amendment guarantees everyone the right to counsel. The Sixth Amendment says that "In all criminal prosecutions, the accused shall enjoy the right . . . to have the assistance of counsel for his defense."

Betts complained that the judge had denied him his right to a lawyer and, furthermore, his rights had been violated under the Fourteenth Amendment, which entitles all to "due process of the law." The arguments were brought before the Supreme Court.

The Court was to decide if the Constitution entitled a poor defendant to an attorney, even if that defendant could not afford to pay for one. What did "right to counsel" as stated in the Sixth Amendment mean? Did the "due process of law" clause of the Fourteenth Amendment require states to provide lawyers to defendants too poor to obtain their own attorneys?

The Decision. The Court decided that "the Sixth Amendment of the Constitution applied only to trials in federal courts." The Court concluded that the Maryland legal system had given Smith Betts ample means and opportunity to defend himself during his trial. The question centered on whether failure to assign counsel resulted in any fundamental unfairness under the "due process" clause of the Fourteenth Amendment. The majority of the justices said that it did not. In cases not involving capital punishment, the states did not have to supply a lawyer to a defendant too poor to pay for one.

Dissenting Opinion. Justice Hugo Black was shocked! Unable to change the minds of the majority during discussion and debate behind closed doors, Black, joined by two other justices, dissented. The dissenting opinion argued that the "due process" clause of the Fourteenth Amendment applies to those rights spelled out in the Bill of Rights, which includes the Sixth Amendment guarantee of the right "to have the assistance of counsel. . . ." Justice Black insisted that the State of Maryland had denied Smith Betts one of his constitutional rights.

Justice Black wrote: "A practice cannot be reconciled" with "common and fundamental ideas of fairness and right, which subjects innocent men to increased dangers of conviction merely because of their poverty."

Black went on to argue that no person should "be deprived of counsel merely because of his poverty." To do so, said Black, "seems to me to defeat the promise of our democratic society to provide equal justice under the law."

EXERCISE FOR LESSON IV-11

Reviewing Main Ideas and Facts

1. Why was Smith Betts arrested, tried, and convicted?
2. What was Betts' legal complaint about his conviction?
3. What were the constitutional issues involved in the *Betts* case?
4. What was the Court's decision in the *Betts* case?
5. How did the majority of the Court interpret the Constitution to support the decision in the *Betts* case?
6. Why did Justice Black and two other justices disagree with the majority's decision? (Explain the constitutional basis for the dissenting opinion in the *Betts* case.)

Justice Black's Vindication (*Gideon v. Wainwright*, 1963)

In 1963, Hugo Black was enjoying his twenty-sixth year on the Supreme Court. The only other member of the Court in 1963 who had served with Black in 1942 was William O. Douglas. In 1942, Justice Douglas had joined Black in his dissent against the majority opinion in the *Betts* case.

In 1963, the Court had an opportunity to reconsider the issues of the *Betts* case. In that year, Clarence Earl Gideon petitioned the Supreme Court to review his conviction in a trial where the State of Florida had denied him counsel.

Clarence Earl Gideon was arrested in Florida for the burglary of a pool hall. Gideon asked the court to appoint an attorney for him, because he was too poor to pay a lawyer. Gideon argued that the Sixth Amendment guaranteed "the right to counsel," and the Fourteenth Amendment provided the right to "due process of law." Gideon charged that he could not receive a fair trial without counsel.

The judge in the Florida court noted Gideon's protests in the records. However, he denied Gideon's request that the state provide an attorney for him, since the case did not involve capital punishment. The judge told Gideon to defend himself, and Gideon did the best he could. Nevertheless, the Court found Gideon guilty and sentenced him to five years in a Florida state prison.

The Constitutional Issue. Gideon petitioned the Supreme court to review his case. His plea for review arrived in a letter addressed to the Supreme Court of the United States written simply with pencil on a page of lined paper. Gideon wrote: "The question is very simple. I requested the [Florida] court to appoint me [sic] attorney and the court refused." He maintained that the state court's refusal to appoint counsel for him denied him rights provided by the Sixth and Fourteenth Amendments.

The case of Clarence Gideon was similar to the case of Smith Betts. Would the Court reverse or sustain the ruling in *Betts v. Brady?* Would Justice Hugo Black, the dissenter, be able to say with satisfaction—"I told you so"?

The Supreme Court decided it was time to reconsider the decision in *Betts*. But there was one big problem. Gideon had not been able to afford a lawyer at his jury trial. How could he now pay the expenses of an appeal to the Supreme Court? Where would he find the money to pay for a lawyer in this case?

The Court itself answered these questions. When a person with no money appeals to the Supreme Court, the Court may act itself on behalf of the indigent plaintiff. In this case, Chief Justice Warren ordered one of his own clerks to research Gideon's case. When the clerk discovered that Gideon's case ought to be heard, the Court asked a prominent Washington attorney, Abe Fortas, to argue it *pro bono publico* (for the good of the public).

Fortas, who would later become a Supreme Court Justice himself, donated his time and resources to the case even though he had never met Gideon. Fortas argued the case, not just for Gideon, but for the principle of due process. Ironically, one of the best, and most expensive, lawyers in the country represented Gideon, who had not been able to afford a lawyer at his trial, when his case came before the Supreme Court.

Decision. *Gideon v. Wainwright*, 1963, was a landmark Supreme Court case. It was also a landmark event in the life of Hugo L. Black. The Court unanimously decided in Gideon's favor, overruling the decision in *Betts v. Brady* (1942).

The Court concluded that the "due process" clause of the Fourteenth Amendment prohibited Florida or any other state from denying Sixth Amendment rights of accused persons. According to this decision, all persons charged with serious crimes have the right to the aid of attorneys. If a defendant is too poor to pay the lawyer's fee, then the state must provide counsel.

Justice Black wrote the majority opinion:

> . . .in our adversary system of criminal justice, any person hauled into court, who is too poor to hire a lawyer, cannot be assured a fair trial unless counsel is provided for him. . . . .Lawyers to prosecute are everywhere deemed essential to protect the public's interest in an orderly society. Similarly, there are few defendants charged with crime, few indeed, who fail to hire the best lawyers they can get to prepare and present their defenses. . . .[There is] widespread belief that lawyers in criminal courts are necessities, not luxuries. The right to one charged with crime to counsel may not be deemed fundamental and essential to fair trials in some countries, but it is in ours. From the very beginning, our state and national constitutions and laws have laid great emphasis on procedural and substantive safeguards designed to assure fair trials before impartial tribunals in which every defendant stands equal before the law. This noble ideal cannot be realized if the poor man charged with crime has to face his accusers without a lawyer to assist him.

As an immediate consequence of the Court's decision, Clarence Earl Gideon obtained a retrial. This time he had the aid of an attorney, and the jury found Gideon "not guilty" of any crime. Smith Betts, too, might have won his case with the help of an attorney.

EXERCISES FOR LESSON IV-11

Reviewing Main Ideas and Facts

1. How was the *Gideon* case of 1963 similar to the *Betts* case of 1942?
2. What was the Court's decision in the *Gideon* case?
3. How did the Court's interpretations of the Constitution differ in the cases of *Gideon* and *Betts*?
4. Why was a new trial ordered for Gideon when it had not been ordered for Betts?
5. What do the cases of *Betts* and *Gideon* show about the Court's use of dissenting opinions?

STUDENT WORKSHEET

The Court's Use of Dissent

1. Check the space next to each of the following items that are true statements about judicial dissent or dissenting opinions coming from the Supreme Court. Be prepared to explain your answers.

____ a. The majority of the Court usually views a dissenting justice as a troublemaker.

____ b. The dissenting justice interprets the Constitution in a different way from the majority.

____ c. A dissenting justice writes a dissenting opinion to tell other justices that "they are wrong."

____ d. A dissenter votes "NO" mainly to register a protest.

____ e. A justice writes a dissenting opinion in hopes of changing the vote of other justices on the case in question.

____ f. A justice writes a dissenting opinion in the hope of influencing contemporaries off the court.

____ g. A dissenter tries to get prisoners out of jail.

____ h. A justice writes a dissenting opinion in hope of changing future decisions.

____ i. A dissenting opinion vetoes the majority decision.

____ j. Most dissenting opinions eventually become precedents for changes in the Court's interpretation of the Constitution.

2. List two purposes of a dissenting opinion.

a. ______________________________

____

____

b. ______________________________

____

____

3. Dissenting opinions sometimes shape the meaning of the Constitution. Present two examples supporting this idea.

a. ______________________________

____

____

b. ______________________________

____

____

4. a. What is the main idea of the excerpt from Justice Black's opinion in the *Gideon* case? (See page 245.)

____

____

____

____

b. Compare Justice Black's opinion in the *Gideon* case to his dissenting opinion in the *Betts* case. How is it similar?

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c. Compare Justice Black's opinion in the *Gideon* case to the majority opinion in the *Betts* case. How is it different?

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IV-12. CONSTITUTIONAL RIGHTS IN A TIME OF CRISIS, 1941-1945

LESSON PLAN AND NOTES FOR TEACHERS

Preview of Main Points

This lesson describes the abridgement of the constitutional rights of Japanese-Americans during World War II. It shows the effects of a national crisis on the constitutional rights of an unpopular minority group. Basic questions about civil liberties and rights are raised. The lesson highlights constitutional issues raised by actions of the President, Congress, and Courts.

Connection to Textbooks

Most American government textbooks say little or nothing about the internment in detention camps of Japanese-Americans during World War II. American history texts mention this event, but do not probe it to examine the profound constitutional issues. Thus, the lesson can be used to provide a detailed study of a significant event in American constitutional history. The lesson can be used with chapters on civil liberties in American government textbooks. Of course, it can be used in connection with chapters about World War II in American history textbooks.

Objectives

Students are expected to:

1. Know about the Executive Order and federal law that established the authority of military commanders to abridge the constitutional rights of Japanese-Americans.
2. Identify reasons used to justify the Executive Order and federal law that led to the evacuation and detention of Japanese-Americans.
3. Know the constitutional issues raised by the evacuation and detention of Japanese-Americans.
4. Know the issues and decisions involved in three Supreme Court cases: (a) *Hirabayashi v. United States,* (b) *Korematsu v. United States* and (c) *Ex parte Endo.*
5. Know the main ideas of the dissenting opinions in the *Korematsu* case.
6. Explain how the government actions toward Japanese-Americans in World War II shaped the meaning of the Constitution.
7. Interpret and appraise the judicial opinions in the cases of *Hirabayashi, Korematsu* and *Endo.*

Suggestions for Teaching the Lesson

Opening the Lesson

- Preview the main parts of the lesson for students.
- Explain how this lesson is connected to the material they are studying in the textbook.

Developing the Lesson

- Have students read this case study. Then ask them to respond to the review questions at the end of the lesson.
- Conduct a discussion of the review questions. The purpose is to make sure that students understand the main ideas and facts of this lesson.
- Have students respond to the questions involving interpretation and appraisal of judicial opinions in the cases of *Hirabayashi, Korematsu* and *Endo.*
- Pay special attention to the dissenting opinions of Justices Murphy and Jackson. Ask students to agree or disagree with the main ideas of these dissenting opinions.

Concluding the Lesson

- Ask students to identify the continuing constitutional significance of the events in this case study about Japanese-Americans in World War II. Ask them to explain what Justice Jackson meant when he referred to the Court's decision in the *Korematsu* case as a "loaded weapon."
- Ask students to speculate about situations in the future that might prompt a governmental response similar to the actions directed toward Japanese-Americans in World War II. What might happen in the future to occasion similar treatment of an unpopular minority group? How might the rights of all citizens be guarded against such a possibility? Ask students to tell what they would do as a member of a minority group facing suspension of constitutional rights. Ask them how they would respond to such a possibility as a member of the majority.
- It has been said that "tyranny can be practiced by a majority against a minority." Ask students this question: Is the treatment of Japanese-Americans during World War II an example of tyranny of the majority?
- Conclude the lesson by pointing out that a true democracy is more than rule by the majority. It also involves protection of the rights and freedoms of minorities.
- Read this quote by the British historian, Lord Acton: "The most certain test by which we judge whether a country is really free is the amount of security enjoyed by minorities." Ask students to discuss Acton's idea with reference to the issues raised by this lesson.

Suggested Readings

Bosworth, Allan R. *America's Concentration Camps.* New York: W. W. Norton & Company, Inc., 1967. This book tells the story of the Japanese-Americans during World War II. Easy to read, it includes discussion of the main constitutional issues and court cases discussed in this lesson.

Irons, Peter. *Justice at War.* New York: Oxford University Press, 1983. The story of the Japanese internment cases. It includes current interviews with people involved in those cases.

Murphy, Paul L. *Constitution in Crisis Times: 1918-1969.* New York: Harper & Row, Publishers, 1972. This is an excellent discussion of constitutional development. Chapter 7 deals with constitutional issues during World War II.

"Commission on Wartime Relocation and Internment of Civilians." *Personal Justice Denied.* Washington, D.C.: U.S. Government Printing Office, 1983. This is a report about the internment of Americans of Japanese ancestry during World War II. It is based on testimony from 750 witnesses and a study of documents.

Suggested Films

Rights, Wrongs and the First Amendment

The film uses such events as the Palmer Raids of World War I, forced relocation of Japanese-Americans in World War II, hearings of the Cold War, conspiracy trials of the Vietnam conflict, and the Watergate invasions of privacy to trace the history of freedom of speech, freedom of the press, and freedom of assembly in the U.S. It dramatizes the difficulties of integrating personal freedom with legitimate national security needs. Stuting Educational Films, 1974, 27 minutes.

The Constitution and Military Power

The film dramatizes the story of a U.S. citizen of Japanese ancestry who tries to avoid detention and relocation during World War II. The film follows his suit through the courts and also summarizes a previous related Court decision of 1866, *Ex Parte Milligan*. From *Decision: The Constitution in Action* series, National Educational television 1959, 29 minutes, black and white.

IV-12. CONSTITUTIONAL RIGHTS IN A TIME OF CRISIS, 1941-1945

On December 7, 1941, Japanese aircraft attacked Pearl Harbor in Hawaii. The surprised defenders suffered a crushing defeat. The Japanese disabled or destroyed five American battleships and three cruisers, killing 2,355 members of the American armed services. The attack left another 1,178 military personnel wounded.

President Roosevelt denounced the "sneak attack" and Congress declared war on Japan. A few days later Germany and Italy declared war on the United States. Thus, Americans entered World War II.

Within three months, the Japanese overran most of southeast Asia and the American territories of Guam and the Philippine Islands. Americans feared a Japanese invasion of Hawaii, or even of California.

General J. L. DeWitt, responsible for defending the Pacific Coast against enemy attack, feared that the 112,000 persons of Japanese ancestry who lived in the West Coast states might be a threat to national security. General DeWitt recommended that these people be sent away from the region.

Suspension of Constitutional Rights

More than 75,000 American citizens of Japanese ancestry lived on the West Coast of the United States. With a few exceptions, all of these citizens had been born and raised in the United States. The overwhelming majority of them had never seen Japan. Virtually all of them spoke English. These Japanese-Americans considered themselves loyal American citizens.

Over thirty-five thousand Japanese immigrants also lived on the West Coast. These men and women had come to the United States before 1924. Although legally citizens of Japan, most considered themselves loyal to their adopted country.

In the weeks after the bombing at Pearl Harbor, some people pointed out that these older Japanese were not United States citizens, but Japanese citizens, even though they had lived in the U.S. for many years. However, few Americans understood that at the time it was illegal for Japanese nationals to become naturalized citizens. In 1922, in the case of *Ozawa v. United States*, the Supreme Court held that certain Asians (such as Japanese, Chinese, and Koreans) could not become naturalized citizens. Thus, although many of the Japanese immigrants living in the United States had wanted to become citizens, the Court had denied them that right. The government only made exceptions for Japanese immigrants who had fought in World War I. Further examples of discrimination against the Japanese came in 1924, when the Congress prohibited all Japanese immigration to the United States.

Thus, the government did not allow Japanese immigrants to become citizens and prohibited their relatives from joining them in the United States. Nevertheless, these Japanese were loyal to their adopted country. Born in the United States, the children of these immigrants had, of course, become citizens at birth. They also considered themselves patriotic and loyal. Yet, many American politicians and leaders thought otherwise. Secretary of War Henry L. Stimson urged President Roosevelt to take action to remove all American citizens of Japanese ancestry, as well as all Japanese immigrants, from the West Coast.

On February 19, 1942, The President issued Executive Order #9066 giving authority to military commanders to establish special zones in territory threatened by enemy attack. The order invested the military commanders with power to decide who could come, go, or remain in the special military areas. The President issued this executive order on his own authority, under the Constitution, as commander-in-chief of the nation's armed forces.

On March 2, General DeWitt established Military Areas #1 and #2 in the western part of the United States.

On March 21, Congress passed a law in support of the President's Executive Order and of the subsequent actions of General DeWitt.

On March 24, General DeWitt proclaimed a curfew between the hours of 8:00 p.m. and 6:00 a.m. for all persons of Japanese ancestry living within Military Area #1, which comprised the entire Pacific coastal region.

On May 9, General DeWitt ordered the exclusion from Military Area #1 of all persons of Japanese background. The vast majority of these people were U.S. citizens born on American soil. These people had thoroughly American attitudes, beliefs, and behavior. Most of them would have felt out of place in Japan.

The military sent the Japanese-Americans to the relocation centers far from the coastal region. In effect, this action placed more than 75,000 American citizens who had broken no laws in jail without trials. The government did not charge any of these people with crimes.

They could take with them only what they could carry. A government order dated December 8, 1941, froze their bank accounts leaving them without funds. To raise cash, they had to sell any possessions they could. Other Americans and local governments took advantage of their plight, offering to buy possessions and property at low prices that rarely reflected the value of the goods. These Japanese-Americans could never regain most possessions and property lost in this way.

Constitutional Issues

Military commanders, acting under authority granted by the President and Congress, had denied more than 75,000 American citizens their constitutional rights of "due process." The Fifth Amendment says, "No person shall be. . .deprived of life, liberty, or property, without due process of law. . . ." Article I, Section 9, of the Constitution grants the privilege of the *writ of habeas corpus*, a written court order issued to inquire whether or not a person is lawfully imprisoned or detained. The writ demands that the persons holding the prisoner either justify his or her detention or release the person.

Had the government taken away the constitutional rights of Japanese-Americans? The Supreme Court finally had to rule on the legality of holding thousands of American citizens in detention camps solely because of their ancestry. Would the Court overturn military actions sanctioned by the President and Congress?

Three notable cases involving the constitutional rights of Japanese-Americans came before the Supreme Court. They were:

1. **Hirabayashi v. United States** (1943)
2. **Korematsu v. United States** (1944)
3. **Ex parte Endo** (1944)

The Hirabayashi Case

Gordon Hirabayashi was an American citizen of Japanese ancestry. Born in the United States, he had never seen Japan. He had done nothing to suggest disloyalty to the United States.

Background to the Case. Hirabayashi was arrested and convicted for violating General DeWitt's curfew order and for failing to register at a control station in preparation for transportation to a relocation camp. At the time Hirabayashi was studying at the University of Washington. He was a model citizen and well-liked student, active in the local Y.M.C.A. and church organizations. Hirabayashi refused to report to a control center or obey the curfew order because he believed both orders were discriminatory edicts contrary to the very spirit of the United States. He later told a court, "I must maintain the democratic standards for which this nation lives. . . .I am objecting to the principle of this order which denies the rights of human beings, including citizens."

The Decision. The Court unanimously upheld the curfew law for "Japanese-Americans" living in Military Area #1. The Court said the President and Congress had used the war powers provided in the Constitution appropriately. The Court also held that the curfew order did not violate the Fifth Amendment.

Speaking for the Court, Chief Justice Stone said discrimination based only upon race was "odious to a free people whose institutions are founded upon the doctrine of equality." However, in this case, Stone said, the need to protect national security in time of war necessitated consideration of race.

The Court only ruled on the legality of the curfew order. It avoided the larger issue of the legality of holding American citizens in detention centers and later in large, barbed-wire enclosures, which the government called relocation camps.

Hirabayashi eventually spent more than three years in county jails and federal prisons for his refusal to go along with a law that made him a criminal simply because of his ancestry.

The Korematsu Case

Fred Korematsu was born and raised in Oakland, California. He could read and write only English. He had never visited Japan and knew little or nothing about the Japanese way of life.

Background to the Case. In June, 1941, before America's official entry into World War II, Fred Korematsu tried to enlist in the Navy. Although the Navy was actively recruiting men in anticipation of entering the war, the service did not allow Korematsu, an American citizen of Japanese ancestry, to enlist. He then went to work in a shipyard as a welder. When the war began, he lost his job because of his Japanese heritage. Korematsu found part-time work as a welder. Hoping to move to Nevada with his fiancee, who was not a Japanese-American, Korematsu ignored the evacuation orders when they came. As an American citizen he felt the orders should not apply to him in any event. The FBI arrested Korematsu, who was convicted of violating orders of the commanders of Military Area #1.

The Decision. By a 6-3 vote, the Court upheld the exclusion of Japanese-Americans from the Pacific coastal region. The needs of national security in a time of crisis justified the "exclusion orders." The war power of the President and Congress, provided by the Constitution, provided the legal basis for the majority decision.

Justice Black admitted that the "exclusion orders" forced citizens of Japanese ancestry to endure severe hardships. "But hardships are a part of war," said Black, "and war is an aggregation of hardships."

Justice Black maintained that the orders had not "excluded" Korematsu primarily for reasons of race, but for reasons of military security. The majority ruling really did not say whether or not the relocation of Japanese-

Americans was constitutional. Rather, the Court sidestepped that touchy issue, emphasizing instead the national crisis caused by the war.

Dissenting Opinions. Three justices—Murphy, Jackson, and Roberts—disagreed with the majority. Justice Roberts thought it a plain "case of convicting a citizen as punishment for not submitting to imprisonment in a concentration camp solely because of his ancestry," without evidence concerning his loyalty to the United States.

Justice Murphy said that the "exclusion orders" violated the right of citizens to "due process of law." Furthermore, Murphy claimed that the decision of the Court's majority amounted to the "legalization of racism. Racial discrimination in any form and in any degree has no justifiable part whatever in our democratic way of life."

Murphy admitted that the argument citing military necessity carried weight, but he insisted that the military necessity claim must "subject itself to the judicial process" to determine "whether the deprivation is reasonably related to a public danger that is so 'immediate, imminent, and impending'. . . ."

Finally, Murphy concluded that "individuals must not be left impoverished in their constitutional rights on a plea of military necessity that has neither substance nor support."

The Endo Case

In 1942, the government dismissed Mitsuye Endo from her civil service job in California and the military ordered her to a relocation center. She had never attended a Japanese language school and could neither read nor write Japanese. She was a United States citizen with a brother serving in the U.S. Army. Her family did not even subscribe to a Japanese language newspaper.

Background on the Case. Miss Endo's attorney filed a *writ of habeas corpus* on her behalf, contending that the War Relocation Authority had no right to detain a loyal American citizen who was innocent of all the various allegations that the Army had used to justify evacuation.

The Decision. The Supreme Court ruled unanimously that Mitsuye Endo "should be given her liberty." The government should release the Japanese-American woman from custody whose loyalty to the United States had been clearly established.

Justice Douglas said, "Loyalty is a matter of the heart and mind, not of race, creed or color. . . ."

Justice Murphy added, "I am of the view that detention in Relocation Centers of persons of Japanese ancestry regardless of loyalty is not only unauthorized by Congress or the Executive, but is another example of the unconstitutional resort to racism inherent in the entire evacuation program. . . . Racial discrimination of this nature bears no reasonable relation to military necessity and is utterly foreign to the ideals and traditions of the American people."

Shortly after the Court's decision in the *Endo* case, Major General Pratt, commander of Military Area #1 at that time, ordered a suspension of the "exclusion orders" that had resulted in the detention of people such as Korematsu and Endo. Most of the detained "Japanese-Americans" were free to return home.

Constitutional Significance

The Court had not used the Constitution to protect Japanese-Americans from abusive treatment during World War II. There was military interference with civil liberties in the name of a wartime emergency. The Supreme Court allowed the executive and legislative branches of government to engage in behavior that it surely would have found unconstitutional in peacetime.

The Court avoided answering a significant constitutional question in reaching verdicts in the cases of Hirabayashi, Korematsu and Endo. Can military authorities, even if supported by acts of the President and Congress, detain citizens outside of a combat zone without charging them with any crime, merely on grounds of defending the nation during wartime?

By avoiding this question, the Court allowed the Executive and Legislative actions that sanctioned the Relocation Centers during World War II to set a dangerous precedent. The Court established a precedent supporting the evacuation and detention of unpopular minorities during time of war. Will others use this precedent to deny constitutional rights to certain groups of citizens during a national crisis in the future?

Afterward

A government commission formed to investigate wartime espionage reported that no evidence existed of disloyal behavior among the Japanese-Americans on the West Coast. The government did not find a single Japanese-American guilty of spying for Japan during World War II, even though it jailed many as suspected spies. In addition, one of the best fighting units of the U.S. Army in Europe, the Nisei Brigade, was made up of Japanese-Americans. This brigade became the most decorated unit in the history of the U.S. Army. Its soldiers proved their loyalty by fighting for their country even though their families had been jailed without "due process of law."

After release from the detention camps, most Japanese-Americans returned to the Pacific Coast. They began again, resettling in cities and starting new farms. Many initiated legal actions to regain their lost property. In 1948, Congress agreed to pay for some of that property, giving the Japanese-Americans less than ten cents for each dollar they had lost. This action was to prove the only admission Congress made that it had done anything wrong to the Japanese-Americans during the war. This minor recompense was a small way of saying, "We're sorry."

The U.S. Government justified the internment two ways. The government claimed that American citizens of Japanese ancestry, more loyal to Japan than to their own country, would spy for Japan. Second, the U.S. Government claimed that because Japan had invaded the U.S., those Americans of Japanese ancestry might have helped Japan. Yet, many have always questioned the validity of these fears.

No real evidence justified fears that American citizens of Japanese descent or Japanese immigrants living in the U.S. supported Japan in any substantial fashion. The few supporters of Japan, mostly old men who posed no danger to the U.S., quickly suffered arrest long before the planning of any mass deportation of Japanese-Americans. No Japanese-Americans or Japanese immigrants committed acts of sabatoge during the war.

John J. McCloy, a key advisor to Secretary of War Stimson, was the civilian in the War Department most responsible for the removal. Many years after the war he admitted that the purpose of the internment was "in the way of retribution for the attack that was made on Pearl Harbor." In other words, their own government forced American citizens to leave their homes and property and to spend four years behind barbed wire guarded by armed soldiers, because a foreign country (which most of these citizens had never visited) had attacked the United States.

In 1980, Congress re-opened investigations into the treatment of Japanese-Americans during World War II and created the Commission on Wartime Relocation and Internment of Civilians. After nearly three years of careful examination of the evidence, which included testimony from 750 witnesses, the Commission issued a report on February 25, 1983. The report concluded: "A grave injustice was done to American citizens and resident aliens of Japanese ancestry who, without individual review or any probative evidence against them, were excluded, removed, and detained by the United States during World War II."

EXERCISES FOR LESSON IV-12

Reviewing Main Ideas and Facts

1. Why were Americans of Japanese ancestry sent to Relocation Centers?
2. What legal authority for evacuating and detaining Japanese-Americans did the President and Congress provide?
3. What constitutional issues did the evacuation and detention of Japanese-Americans during World War II raise?
4. What constitutional issue did the Supreme Court address in each of these cases?
   a. *Hirabayashi v. United States*
   b. *Korematsu v. United States*
   c. *Ex parte Endo*
5. What did the Court decide in each of these cases?
   a. *Hirabayashi v. United States*
   b. *Korematsu v. United States*
   c. *Ex parte Endo*
6. What constitutional issue did the Court avoid?
7. What continuing constitutional significance does the treatment of Japanese-Americans during World War II have?

Interpreting and Appraising Judicial Opinions

1. List the main ideas of the dissenting opinions in the *Korematsu* case by Justices Roberts and Murphy.
2. Following is an excerpt from Justice Jackson's dissent in the *Korematsu* case. What is the main idea of this excerpt?

> A military order, however unconstitutional, is not apt to last longer than the military emergency. . . . But once a judicial opinion rationalizes such an order to show that it conforms to the Constitution. . . the Court for all time has validated the principle of racial discrimination in criminal procedures and of transplanting American citizens. The principle then lies about like a loaded weapon ready for the hand of any authority that can bring forward a plausible claim of an urgent need.

3. Do you agree with the decisions of the Court in the cases of Hirabayashi, Korematsu and Endo? Explain.
4. Do you agree with the dissenting opinions of Justices Murphy, Roberts, and Jackson?

IV-13. THE LIMITS OF PRESIDENTIAL POWER: TRUMAN'S DECISION TO SEIZE THE STEEL MILLS

LESSON PLAN AND NOTES FOR TEACHERS

Preview of Main Points

In the case of *Youngstown Sheet & Tube v. Sawyer*—often known as the steel seizure case—the Supreme Court struck down President Truman's Executive Order to seize the nation's steel mills in order to prevent a strike during the Korean War. The case involved the principle of separation of powers with the Court ruling that the President had no power under the Constitution to seize private property unless Congress authorized the seizure.

Connection to Textbooks

This lesson can be used with government textbook material on separation of powers, the powers of the President, or the powers of Congress. The lesson could enrich history text discussions of separation of powers, the Truman Presidency, or the growth of presidential power.

Objectives

Students are expected to:

1. Explain the circumstances leading up to the *Youngstown* case.
2. Identify the key participants and constitutional issues involved in the *Youngstown* case.
3. Identify the arguments presented by both sides in the case.
4. Explain the immediate impact of the Court's decision.
5. Explain the longer-term significance of the Court's decision.
6. Use information in the case to make a judgment about the Court's decision.

Suggestions for Teaching the Lesson

Opening the Lesson

- Explain to students how the lesson is connected to their textbook material. Review briefly the meaning of separation of powers.

Developing the Lesson

- Have students read the case study and complete the questions under "Reviewing the Case."

Concluding the Lesson

- Conduct a discussion which gives students an opportunity to make judgments about the Court's decision. Prompt the discussion by asking students these questions:
  1. Do you agree with the majority opinion or with the dissent? Why?
  2. What could be the consequences of letting Presidents expand their power as they saw fit?
  3. On the other hand, what might be the consequences of limiting a President's ability to act forcefully to cope with national emergencies?

Suggested Reading

Marcus, Maeva. *Truman and the Steel Seizure Case: The Limits of Presidential Power.* New York: Columbia University Press, 1977. This book is a case study about the constitutional significance of President Truman's decision to have the federal government take over the steel mills during a national emergency. The author examines events leading to Truman's decision, the Supreme Court decision that disallowed the President's action, and the legal and social consequences of the Court's decision.

IV-13. THE LIMITS OF PRESIDENTIAL POWER: TRUMAN'S DECISION TO SEIZE THE STEEL MILLS

The separation of powers is a major principle of American government. Under the Constitution, Congress makes laws, the President carries out laws, and the courts make judgments about them.

Of course, this separation is not complete. The system of checks and balances means each branch of government shares to some degree in the job of the others. The President may, for example, veto bills passed by Congress. Still, the concept of the separation of powers aims to prevent the same branch from making, executing, and enforcing the laws.

President Harry Truman tested the limits of presidential power under the Constitution when he ordered the federal government to take control of the nation's steel mills. Truman's order led to the making of a major Supreme Court decision on the constitutional limitations of presidential power.

Background of the Case

In the spring of 1952, President Truman faced a difficult problem. The United States was in the middle of the Korean War, and the nation's steel workers were about to go on strike. Truman and his advisors feared a long strike could bring disaster. American troops in Korea might run short of ammunition and weapons.

The President acted forcefully. On April 8, a few hours before the expected start of the strike, Truman issued Executive Order #10340. This order directed Secretary of Commerce Charles Sawyer to temporarily take control of the nation's steel mills and to keep them running. The steel companies accepted the order but moved to fight Truman's action in court.

Taking temporary control of the steel mills was not the only alternative open to Truman. The President had another way to deal with the strike. He chose not to use it.

In 1947 Congress had passed the Taft-Hartley Act. Under this law, the President could get a court order delaying the strike for 80 days. During this "cooling off" period, the union of steel workers and the steel mill owners would have tried to settle their differences.

Truman disliked the Taft-Hartley Act. He thought it was anti-labor. He had vetoed it in 1947, but Congress had overridden his veto. He had never used the law and would not do so in the steel strike.

Furthermore, Truman believed the blame for the strike did not lie with the steel workers. The union had already postponed the strike four times in an effort to reach a settlement. Government arbitrators had recommended a compromise, which the union had accepted. The steel companies had rejected the arbitrators' recommendations, even though in 1951 the steel companies earned their greatest profits in more than thirty years. President Truman believed the steel companies were using the emergency of the Korean War to force the steel workers to accept low wages. Under such circumstances Truman held the steel companies, and not the steel workers, responsible for the crisis in the industry. Thus, the President issued Executive Order #10340, temporarily seizing the steel mills.

The steel companies quickly challenged Truman's action in the federal district court in Washington, D.C. Within a few days, the Supreme Court stepped in to settle the conflict. The case became known as *Youngstown Sheet and Tube Company v. Sawyer.*

Constitutional Issue

President Truman's order stood as a remarkable assertion of presidential power. The President was not carrying out or acting under a law passed by Congress. No law authorized a President to seize and operate the steel mills. By his order, President Truman was, in effect, making law—a power reserved for Congress by Article I of the Constitution.

Had the President overstepped the constitutional boundary that separated the functions of the legislative and executive branches? Or did the Constitution give Truman powers to protect the nation in times of national emergency?

Arguments

The steel companies argued that the President's order clearly violated the Constitution. They said neither the Constitution nor existing laws gave him authority to seize private property. In addition, Congress had already set up procedures to handle the strike in the Taft-Hartley Act. Thus, they claimed the President had exceeded his constitutional authority.

The President argued that his authority, as chief executive under Article II of the Constitution, gave him power to keep steel production going in times of national emergency. In addition, he argued that his power as commander-in-chief allowed him to take actions necessary to protect the lives of American troops. This power included ensuring a steady flow of steel to produce weapons.

The Decision

Truman lost the argument. On June 2, the Supreme Court ruled 6-3 against the President. The majority of the Court held Truman's seizure of the steel mills an unconstitutional exercise of power.

Justice Hugo L. Black, in the majority opinion, said that the President had no power, either as chief executive or commander-in-chief, to seize private property—even temporarily and during a national emergency. Black said that the power to authorize such an action belonged to Congress, not to the President. Thus, Truman could not seize the steel mills unless Congress passed legislation enabling him to do so. As Congress had not done so, the seizure was illegal.

Black noted that, in writing the 1947 Taft-Hartley Act, Congress had considered letting Presidents seize plants in the events of strikes but rejected the idea. Thus, by his executive order Truman had attempted to make his own law. Yet the Constitution, Black said, did not permit him to do so. The Constitution limited the President "to the recommending of laws he thinks wise and the vetoing of laws he thinks bad."

Justice William O. Douglas concurred. Douglas said he was shocked by the "legislative nature of the action taken by the President."

Three justices, all Truman appointees, issued a strong dissent. They argued that during a grave national crisis, such as the Korean War, the Constitution allowed the President to exercise unusual powers. Chief Justice Vinson wrote, "Those who suggest that this is a case involving extraordinary powers should be mindful that these are extraordinary times." Vinson added that Truman's actions followed the tradition of taking extraordinary actions during a time of crisis established by Presidents like Lincoln, Cleveland, Wilson, and Franklin Roosevelt.

Significance of the Decision

Immediately, the *Youngstown* decision required the government to return the steel mills to their owners. Truman promptly complied with the Court's ruling even though he strongly disagreed with it. The steel strike began and lasted for 53 days. When it ended, the steel companies agreed to a contract within one cent of that recommended by the government arbitrators. Truman never used the Taft-Hartley Act to intervene. The President did claim that in the summer and fall of 1952 the strike caused some shortages of ammunition.

Truman later wrote that the Court's decision "was a deep disappointment to me." He added, "I think Chief Justice Vinson's dissenting opinion hit the nail right on the head, and I am sure that someday his view will come to be recognized as the correct one."

The President had every reason to be disappointed. The *Youngstown* case stands as one of the rare instances when the Supreme Court flatly told a President he had overstepped the limits of his constitutional power.

In this decision, the Court clearly established that there are limits on the powers a President can derive from the Constitution, even during a national emergency. For nearly twenty years presidential power had been growing through a series of crises including the Great Depression and World War II. The *Youngstown* decision had the effect of slowing this steady growth of the emergency powers of the presidency.

This case shows how strong Presidents can try to expand the powers of the presidency. The case also shows how the Supreme Court can act to preserve the separation of powers inherent in our system.

EXERCISES FOR LESSON IV-13

Reviewing the Case

1. Describe the events leading up to the *Youngstown* case.
2. Why did President Truman not want to use the Taft-Hartley Act to settle the steel strike?
3. What was the issue in the *Youngstown* case? What were the arguments on each side?
4. What did the Court decide?
5. What reasons did the majority give for its decision?
6. What position did Chief Justice Vinson take in his dissent?

IV-14. YOU BE THE JUDGE: *CAMARA V. THE MUNICIPAL COURT OF THE CITY AND COUNTY OF SAN FRANCISCO*

LESSON PLAN AND NOTES FOR TEACHERS

Preview of Main Points

This lesson focuses on how the Supreme Court actually makes decisions. Students (working individually or in small groups) decide the Supreme Court case of *Camara v. The Municipal Court of the City and County of San Francisco* (1967). The lesson gives students the facts of the case, the relevant parts of the Constitution, a key precedent, and the lawyers' arguments in the case. After students make their own decision they examine how the Supreme Court actually decided the case by examining excerpts from the Court's opinion.

Connection to Textbooks

This lesson can be used with government textbook material on the judicial process, the Bill of Rights, or the Supreme Court. It can be used with history textbook discussions of the Bill of Rights or the Supreme Court. The lesson provides a more detailed look at how judicial decisions are reached than textbooks are able to do.

Objectives

Students are expected to:

1. Identify the facts and constitutional issue in the *Camara* case.
2. Make a judgment about the constitutionality of actions of San Francisco city officials and interpret the meaning of the Fourth Amendment's ban on "unreasonable searches and seizures."
3. Give their own decisions and reasoning about the *Camara* case.
4. Identify reasons presented in the majority and minority opinions.
5. Compare that reasoning with their own (group) reasoning.
6. Develop a greater understanding of the process of judicial decision making.

Suggestions for Teaching the Lesson

This lesson can be used as an "in-depth" study accompanying the textbook discussions of the Bill of Rights, the judicial process, or the Supreme Court.

Opening the Lesson

- Preview the main part of the lesson for students.
- Explain how this lesson is connected to the material they have just studied in the texbook.

Developing the Lesson

- Have students read the case study. Do **not** distribute the separate sheet titled "The Supreme Court Decides."
- Have students complete "You Decide" located at the end of the reading. Students may complete "You Decide" working individually or in small groups.
- If students are to work in small groups, divide the class into groups of five or seven (or any uneven, manageable number). Have the groups quickly choose a Chief Justice to lead the discussion and to report their decision to the class later. (You may want to appoint the Chief Justice to save time. One quick way to make the selection is to have students appoint the one whose birthday comes last in the year, the youngest member, etc.) The group should discuss and decide the case. You may need to remind them to pay attention to the facts, the Constitution, the precedent, and the lawyers' arguments. They should also agree on their reasons. If this is not possible in some groups, one or more of the students may offer a minority opinion.

Concluding the Lesson

- Hand out the page titled "The Supreme Court Decides." After students have read it, conduct a brief discussion of the following questions.
  1. What was the majority decision?
  2. What reason(s) did the justices give for their decision?
  3. What reason(s) did the minority justices give for their dissent?
  4. With which side did your group's decision agree?
  5. Were your reasons similar to the Court's?
- Alternatively, you may wish to omit the group discussions. You may instead conclude the lesson with a discussion of these questions based on students' individual answers to "You Decide."

IV-14. YOU BE THE JUDGE: *CAMARA V. THE MUNICIPAL COURT OF THE CITY AND COUNTY OF SAN FRANCISCO*

How do Supreme Court justices arrive at their decisions? What factors do they consider when they decide a case?

In making major decisions, justices usually take four factors into account: (1) the facts of the case, (2) the Constitution, (3) precedents or earlier court decisions in similar cases, and (4) the arguments presented by attorneys for both sides in the case.

You will use these four factors to decide an actual case as Supreme Court justices do. The case involves building inspectors, an angry tenant, the Fourth Amendment, and a conflict between a government's duty to promote public health and an individual's right to privacy. These issues came before the Supreme Court in the case of *Camara v. The Municipal Court of the City and County of San Francisco.*

Facts of the Case

Supreme Court justices have no fact-finding authority similar to that of trial court judges. Rather, they use the facts from the trial court record either to decide if some action or law violated the Constitution or to interpret the meaning of a federal law.

Thus, justices must know the facts to reach a decision. Consider the facts of the *Camara* case, just as the justices did.

Refusing an Inspection. Roland Camara lived on the ground floor of a three-story apartment building in San Francisco. Camara rented part of the ground floor to use it primarily as a bookstore, but he also lived in the rear of his store.

The San Francisco Municipal Code required the Department of Public Health to inspect all apartment houses every year. On November 6, 1963, Inspector Nall went to the premises to make the required inspection. Nall requested permission to enter Camara's apartment. Camara refused to let him in.

Inspector Nall returned on November 8, 1963, and again requested permission to enter and inspect. Camara again refused him.

Action Against Camara. The San Francisco Code neither permitted forced entry or authorized inspectors to obtain search warrants in such situations. Instead, the inspector's office mailed Camara a notice to appear in the District Attorney's office to explain his actions. Camara did not appear and for a third time refused to let inspectors enter his apartment.

Officers then arrested Camara and charged him with a violation of the Municipal Housing Code. He responded to the complaint against him in Municipal Court by arguing that the part of the housing code involved was unconstitutional. Camara lost his case in several lower appeals courts. Finally, in 1967 the Supreme Court heard the case.

The issue that came to the Supreme Court was as follows: **Did the San Francisco building officials have the right to inspect Camara's residence without a search warrant? Or did such inspections violate Camara's Fourth Amendment rights protecting him against "unreasonable searches and seizures"?**

The Constitution

The *Camara* case involved the meaning of the Fourth Amendment protection against "unreasonable searches and seizures." That Amendment says:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Over the years the Supreme Court had defined "unreasonable searches and seizures" to mean any search police officers conducted without a proper warrant. The Court only made exceptions for searches of moving vehicles and searches taking place during an arrest.

The *Camara* case, however, presented a different constitutional question. What about routine fire and health inspections of buildings by city officials like those in San Francisco? These so-called "administrative searches" normally did not involve criminal prosecution. Their purpose was to promote public health and safety.

Did the Fourth Amendment also apply to such inspections? Did the ban against "unreasonable searches and seizures" require public health or fire department officials to obtain search warrants to conduct inspections? Or did the Fourth Amendment protections apply only in criminal cases where people were accused of crimes?

Precedent

To help answer these questions the justices looked to precedents, the decisions of earlier courts in similar cases. How did earlier courts interpret the meaning of the Fourth Amendment?

The case of *Frank v. Maryland* (1959) had established the key precedent. Aaron D. Frank was a homeowner in Baltimore, Maryland. A health inspector found evidence of rats in the area of Frank's home. He considered these probable cause to justify searching Frank's home. The inspector requested entry to the home. He did not have a search warrant. Frank denied entry claiming the Fourth Amendment protected him.

The Supreme Court ruled against Frank. In the *Frank* case, the Court linked the Fourth Amendment to the Fifth Amendment's ban against forcing a person "in any criminal case to be a witness against himself." It ruled that the main purpose of the Fourth Amendment intended to protect individuals from arbitrary searches conducted as part of criminal investigations. Since the inspector wished to conduct the *Frank* search for the purpose of inspecting for rats, and involved no criminal charges, he did not need a search warrant.

Thus, the *Frank* case set a key precedent. The Fourth Amendment did not require city officials to obtain search warrants for inspections made as part of fire and health inspections. The Fourth Amendment only protected people against "unreasonable" searches where the investigators searched to find evidence for criminal investigations.

The *Frank* precedent meant that if the justices deciding the *Camara* case ruled that health and fire inspections required search warrants, they would overturn the *Frank* case of 1959. They would be deciding that the earlier Court's interpretation of the Constitution in the *Frank* case was wrong. They would be saying that the Fourth Amendment protections applied to people regardless of whether or not they stood accused of crimes.

Arguments by Attorneys

Lawyers for the two sides bringing a case before the Supreme Court present oral arguments and file briefs (written arguments) with the Court. Justices consider these arguments as they apply the Constitution and precedents to the case. You should let them help you decide on a verdict.

Arguments for Camara. The lawyers for Camara argued that the Court should overrule the precedent set by the case of *Frank v. Maryland.* Camara's lawyers interpreted the Fourth Amendment as a broad protection against invasion of privacy by government officials such as the San Francisco inspector. They argued the *Frank* decision had wrongly weakened the Fourth Amendment protection against unreasonable searches and seizures by tying it to the Fifth Amendment.

Camara's lawyers cited numerous precedents to demonstrate the correctness of the broader interpretation of the Fourth Amendment protection. They pointed out that in *Mapp v. Ohio* (1961) the Court had found the provisions of the Fourth and Fifth Amendments were each "complimentary to, although not dependent upon, that of the other."

Arguments for San Francisco. The lawyers for San Francisco and the State of California argued that, "the issue in the case was the right of a local community to enact ordinances requiring the occupant of a residence to submit to routine, duly authorized health inspections, without a warrant." They claimed that the reasoning in *Frank v. Maryland* was consistent with this view.

In addition, they claimed that as there are obvious differences between a health inspection and a search for criminal evidence, each should be subject to different standards. Thus, as long as inspection procedures remained reasonable, as they were in San Francisco, there was no need to require search warrants. Indeed, they argued that requiring search warrants would provide no more protection against inspection and could even lessen a person's privacy if an inspector used a warrant at an inconvenient time.

Amicus Curiae Briefs. In judging important cases, the Supreme Court allows parties with interest in their outcomes to also file briefs even if they are not directly involved in the cases. We call these *amicus curiae*—friend of the Court—briefs.

Three groups filed *amicus curiae* briefs in support of Camara. One, an organization called Homeowners in Opposition to Housing Authoritarianism, argued that no one could actually distinguish between inspections for the public welfare and searches for criminal activity. Thus, the Court should require search warrants in both cases.

Two *amicus curiae* briefs supported San Francisco. The Commonwealth of Massachusetts filed one. Massachusetts argued that search warrants "belong uniquely to criminal law." Since inspectors carry out so many inspections, if the Court required them to obtain warrants, the judges responsible for issuing the warrants would end up simply acting as rubber stamps for inspectors.

EXERCISES FOR IV-14

You Decide

As justices of the Supreme Court do, you have examined the facts, the Constitution, the precedents and the arguments related to the case of *Camara v. The Municipal Court of the City and County of San Francisco.* Now you must make a decision.

To make a decision follow these steps.

1. **Select the side you would rule for.**

   Either:

   a. **Rule for Camara and overturn the Frank case.** Such a ruling would require city inspectors to obtain warrants to enter and inspect private residences if persons inhabiting them refused to let the officers in.

   Meaning of the Constitution. This ruling would broadly interpret protections offered by the Fourth Amendment. You would interpret the Fourth Amendment's ban on "unreasonable searches and seizures" to be independent of the Fifth Amendment and to cover inspections for public safety as well as for criminal investigations.

   Or:

   b. **Rule for San Francisco and uphold the Frank case.** Deciding in favor of San Francisco would allow city officials to enter and inspect private residences, such as Camara's, without search warrants.

   Meaning of the Constitution. This ruling would narrow the interpretation of protections offered by the Fourth Amendment. You would interpret the Fourth Amendment's ban on "unreasonable searches and seizures" to be linked to the Fifth Amendment. Thus, the Fourth Amendment protection would only apply in criminal cases.

2. Identify and briefly list the consequences of your choice for these groups: city inspectors, the owners of apartment buildings, local judges.
3. Prepare an "opinion" by listing the reasons for your choice. Explain your opinion of how your decision relates to the Frank case.

THE SUPREME COURT DECIDES

In 1967, the Supreme Court ruled (6-3) in favor of Camara. Thus the Court overturned *Frank v. Maryland.*

The Majority Opinion. Justice Byron White wrote the majority opinion. He said that the Fourth Amendment intended to protect individuals from arbitrary searches of their homes. "A search of private property without proper consent is 'unreasonable' unless it has been authorized by a valid search warrant."

White declared that general inspections to enforce health and safety codes did not require the use of search warrants. But if an owner refuses to permit a search of his premises, the inspector must secure a warrant to proceed. Thus, the Court adopted a broad interpretation of the Fourth Amendment. It held that an individual does not need to be a suspected criminal to enjoy the protection of the Fourth Amendment.

Justice White drove home his point by stating:

> The final justification suggested for warrantless administrative searches is that the public interest demands such a rule. . . . But we think this argument misses the mark. The question is not, at this stage at least, whether these inspections may be made, but whether they may be made without warrant. . . . The question is not whether the public interest justifies the type of search in question but whether the authority to search should be evidenced by a warrant, which in turn depends in part upon whether the burden of obtaining a warrant is likely to frustrate the governmental purpose behind the search. . . . It has nowhere been argued that fire, health, and housing code inspection programs could not achieve their goals within the confines of a reasonable search warrant requirement.

A Dissenting Opinion. Not all the justices agreed with Justice White. Justice Tom Clark wrote a dissenting opinion. He argued that the Fourth Amendment did not guarantee complete individual privacy. It forbid only "unreasonable" searches. For over 150 years, he noted, courts have allowed municipalities the right to inspect without warrants.

Clark believed that citizens would impede thousands of inspections. He argued that since the majority required municipalities to obtain warrants after each refusal of entry, they would need warrants for nearly every inspection. They would have to print up in pads of a thousand or more, leaving with space to insert street numbers, and would have to issue them in broadcast fashion. This procedure would degrade the search warrant. Clark would have preferred the Court to uphold *Frank v. Maryland.*

CHAPTER V

Landmark Cases of the Supreme Court

OVERVIEW FOR TEACHERS

This chapter includes twenty lessons that treat landmark decisions of the Supreme Court. Nineteen of these lessons are brief summaries or digests, not detailed case studies. These nineteen lessons concisely present the background, issues, and decisions of landmark cases. The constitutional bases and significance of the decisions are highlighted. One of these cases, *Marbury v. Madison*, is treated in more detail than other lessons in chapter 5. This was done in recognition of the importance of the *Marbury* case in the development of constitutional law.

These lessons can help enlarge upon the capsule comments about landmark cases often found in textbooks. They may be used directly with students or as reference material for your own lectures and discussions.

Student Objectives

Every lesson focuses on a different Supreme Court decision. However, all the lessons are designed to help students achieve four basic objectives. After completing any given lesson, students should:

1. Know how the issue in the case arose.
2. Identify the major constitutional issue in the case.
3. Identify the Supreme Court's decision in the case.
4. Explain the significance of the Court's decision.

Teaching Suggestions

Each lesson contains a worksheet, to guide the analysis of the case by students. You may have students read the entire lesson, complete the worksheet, and discuss their responses.

As an alternative, you may blank out the section of the lesson entitled "The Decision" and distribute only the first part of the lesson. After reading about the facts of the case and the constitutional issue involved, students could reach their own decision on the case. Students could then compare their decisions with the Court's ruling as described in the lesson and complete the worksheet accompanying the lesson.

Sources of the Cases

The cases included in this chapter do not, of course, comprise an exhaustive list of significant Supreme Court decisions. At the same time, every case here qualifies as a landmark decision. The cases included in this chapter come from two sources:

1. John Garraty, ed. *Quarrels That Have Shaped the Constitution* (New York: Harper & Row, Publishers, 1962).
2. Duane Lockard and Walter Murphy. *Basic Cases in Constitutional Law* (New York: Macmillan Publishing Co., 1980).

Both volumes include discussion of a small number of Supreme Court cases, which in the opinion of experts, are landmarks in constitutional development.

Garraty believes that knowledge of these landmark cases should be an integral part of the education of citizens. He argues: "To try to understand the modern Constitution without a knowledge of these judicial landmarks would be like trying to comprehend Christianity without reading the Bible" (p. viii).

LIST OF LESSONS IN CHAPTER V

V-1. *Marbury v. Madison* (1803)
V-2. *McCulloch v. Maryland* (1819)
V-3. *Dartmouth College v. Woodward* (1819)
V-4. *Gibbons v. Ogden* (1824)
V-5. *Charles River Bridge v. Warren Bridge* (1837)
V-6. *Dred Scott v. Sandford* (1857)
V-7. *Ex parte Milligan* (1866)
V-8. *Munn v. Illinois* (1877)
V-9. *Plessy v. Ferguson* (1896)
V-10. *Northern Securities Company v. United States* (1904)
V-11. *Muller v. Oregon* (1908)
V-12. *Schenck v. United States* (1919)
V-13. *Schechter Poultry Corp. v. United States* (1935)
V-14. *United States v. Curtiss-Wright Export Corp.* (1936)
V-15. *Brown v. Board of Education of Topeka* (1954)
V-16. *Gideon v. Wainwright* (1963)
V-17. *Reynolds v. Sims* (1964)
V-18. *Miranda v. Arizona* (1966)
V-19. *Heart of Atlanta Motel v. United States* (1964)
V-20. *United States v. Nixon* (1974)

V-1. *MARBURY V. MADISON* (1803)

In the election of 1800 Thomas Jefferson, the Democratic-Republican candidate, defeated the Federalist John Adams. The inauguration of Jefferson, on March 4, 1801, was a milestone in history. For the **first** time in the history of the modern world an opposition candidate **peacefully** replaced a defeated national leader. These events proved to the world that the new American Constitution worked. Not only those who had voted for the new President, but also many people who wanted the American experiment in democracy and constitutional government to succeed celebrated Jefferson's inauguration.

However, John Adams and his Federalist friends saw no reason to celebrate. Adams had lost the presidency, and the Federalists had lost control of Congress. Adams and his party feared that Jefferson would ruin the country by undoing everything the Federalists had accomplished in the last twelve years.

The parties differed profoundly. Adams supported the interests of bankers, owners of large commercial enterprises, and owners of ships. Jefferson advocated policies to help farmers, sailors, and skilled craftsmen. Adams supported the Bank of the United States; Jefferson had always opposed the federal charter of this privately owned "national bank." Adams had supported the Sedition Act of 1798 which sent men to jail for criticizing the government. Jefferson's closest advisor, James Madison, had written the First Amendment protecting freedom of speech and the press. In foreign affairs, Adams wanted closer ties to Great Britain; Jefferson advocated close relations with France, America's oldest ally and Britain's (oldest) main enemy.

Besides fearing Jefferson's policies, the Federalists wanted to retain the privileges, power, and responsibilities they had grown accustomed to. Between the November election and the March inauguration, the Federalists tried to insure that they would continue to play a role in the American government.

On January 20, 1801 Adams appointed Secretary of State John Marshall Chief Justice of the United States Supreme Court. Although the Senate confirmed this nomination in less than two weeks, Marshall remained Secretary of State until Jefferson took office. Thus, for over a month, Marshall simultaneously held the posts of Secretary of State of the United States and Chief Justice of the United States Supreme Court.

The appointment of Marshall was only the first step in preserving some Federalist power. Throughout February the Federalists, who controlled Congress, created offices for Adams to fill with loyal supporters. During his last month in office Adams nominated over two hundred men to new offices. These nominations included forty-two justices of the peace for the new national capital at Washington, D.C. Adams appointed William Marbury as one of these justices of the peace.

The Senate received the nominations of the new justices of the peace on March 2, and confirmed them on March 3, Adams' last day in office. In order for the confirmed appointees to assume office the executive had to complete one more procedure: the President had to sign commissions empowering each man to hold office, and the Secretary of State had to place the official seal of the United States government on those commissions, and supervise their delivery. In those days, officials of course prepared the commissions by hand. Thus, Adams spent his last evening as President signing commissions. The Secretary of State, John Marshall, worked well into the night, affixing the Great Seal of the United States to the commissions and sending them off for delivery. However, in the chaos of Adams' last day in office, a number of commissions, including William Marbury's though signed and sealed, remained undelivered.

On March 4, 1801, Jefferson became President. Soon after that Marbury asked the new Secretary of State, James Madison, for his commission. Madison, after consulting with Jefferson, refused to give Marbury the commission. Marbury then appealed to the Supreme Court for help.

Marbury asked the Court to issue a *writ of mandamus* directed at Secretary of State James Madison. A *writ of mandamus* orders a public official to carry out his duties. Marbury argued that he was legally entitled to his commission, and that Madison should give it to him. Madison ignored these legal proceedings. Neither he nor Jefferson believed that the Supreme Court could give orders to the other two branches of the government. Thus, the Court had to rule on Marbury's case with the knowledge that Madison might ignore the ruling. The man responsible for making the ruling was John Marshall, who, as Secretary of State, had failed to send Marbury his commission in the first place.

The Constitutional Issue

The case threatened to create a constitutional crisis. If Marshall ordered Madison to deliver the commission, Madison would probably ignore him. If that had happened, Marshall could not have forced Madison or Jefferson to act. Public opinion supported the extremely popular, democratically elected Jefferson administration, not the Chief Justice a lame-duck President had appointed less than two months before leaving office.

On the other hand, Marshall believed Marbury deserved his commission. An act of Congress had created Marbury's office, and the Senate had confirmed his presidential appointment. With the commission legally signed and sealed, delivery of the commission was not, in Marshall's view, a discretionary act on the part of the Secretary of State. Madison could not decide whether or not to deliver the commission. Rather, his job required him to deliver it. Thus, if Marshall refused to order Madison to deliver the commission, then Marshall would be admitting that he, and the Supreme Court, lacked the authority to enforce the laws of the United States. If the courts would not enforce the laws, who would?

The Decision

The Court ruled Marbury was due his commission. Chief Justice Marshall wrote the unanimous opinion. Marshall said, "To withhold his commision is an act deemed by the court not warranted by law, but violative of a vested legal right." He asserted: "The government of the United States has been emphatically termed a government of laws, not of men." Marshall implied that Madison violated the law by not giving Marbury his commission.

Marshall held that the *writ of mandamus* was the proper legal writ to require a public official to do his duty. Marshall also acknowledged that the Judiciary Act of 1789 authorized the Supreme Court to issue such a writ.

However, the issue was whether the Supreme Court had the power to issue the *writ of mandamus.* Marshall knew that if he ruled in favor of Marbury, Madison would probably ignore the Court's order to deliver the commission and cause a constitutional crisis. Above all else, Marshall hoped to avoid such a controversy.

One more question remained for Marshall to answer. Could the Supreme Court actually issue the *writ of mandamus*? If it could, then Marshall had painted himself into a corner. Having admitted Marbury deserved the writ, he would have to issue one. But Marshall had an out.

Marbury had directed his request for a *writ of mandamus* to the Supreme Court. By asking the Supreme Court to issue the writ, Marbury had asked the Court to take "original jurisdiction" in the case. In complying with such a request, the Supreme Court would act as a trial court usually acts. However, the founders of the Supreme Court had primarily designed the Supreme Court as an appellate court—a court to hear appeals from other federal courts and from the state courts. The Constitution, in Article III, Section 2, Clause 2, spelled out the few types of cases over which the Supreme Court would exercise original jurisdiction. Marshall examined that clause of the Constitution and concluded it did not authorize the Supreme Court to issue a *writ of mandamus.* Such a writ could only come from a lower court.

Thus, Marshall concluded that Section 13 of the Judiciary Act of 1789, which authorized the Court to issue a *writ of mandamus,* violated the Constitution. As the Supreme Court could not enforce an unconstitutional law, Marbury did not acquire his writ.

Marshall's opinion avoided generating a confrontation with Madison and Jefferson. Marshall did not order Madison to give Marbury his commission. Although Jefferson and Madison may not have liked the way Marshall reasoned, they certainly could not argue with his conclusions. Marshall also succeeded in lecturing Madison and Jefferson on their respective responsibilities as Secretary of State and President. In addition, by his opinion, Marshall successfully asserted the Supreme Court's power to declare acts of Congress unconstitutional. This power is known as **judicial review.**

The *Marbury* decision provided the constitutional basis for the Supreme Court's power of judicial review of the actions and laws of the federal government. This decision asserted the Court's power to declare invalid those federal laws it finds in conflict with the Constitution. The Court's decision laid the foundation on which the Supreme Court eventually developed into an important branch of the Federal government. Full acceptance of judicial review would not evolve until after the Civil War. Regardless, this case established the principle that the courts and government should not enforce unconstitutional laws.

WORKSHEET: *MARBURY V. MADISON* (1803)

1. Explain William Marbury's complaint.

2. What did he want the Supreme Court to do about it?

3. What constitutional dilemma did the *Marbury* case create:

   ____ a. Any decision would make it too easy for the President to issue *writs of mandamus.*

   ____ b. The Court wanted to maintain its authority, but there seemed to be no decision that would allow that to happen.

   ____ c. The Court feared Congress would ignore its decision and not enforce the *writ of mandamus.*

4. Did the Court's decision force Madison to give Marbury his commission? ______________

5. What did John Marshall's opinion say about the Court's power?

6. Which of the following statements about the effects of this decision on the American Government are correct?

   ____ a. It has allowed Congress to dominate the other two branches.

   ____ b. It has provided the basis for judicial review of Congressional Acts.

   ____ c. It has made the presidency stronger.

   ____ d. It has increased the power of the Supreme Court.

7. What offices did John Marshall hold at the time Adams first appointed Marbury justice of the peace?

8. What does Article III of the Constitution say about the original jurisdiction of the Supreme Court?

9. What is the difference between original jurisdiction and appellate jurisdiction?

10. Why do you think the Framers limited the original jurisdiction of the Supreme Court?

11. Why do you think Jefferson and Madison did not want to give Marbury his commission?

12. Do you think John Marshall should have agreed to hear this case? __________ If he had ordered Madison to give Marbury his commission, can you think of any legal and constitutional reasons that Madison could have given for refusing to obey the order?

V-2. *McCULLOCH V. MARYLAND* (1819)

Congress chartered the Second Bank of the United States in 1816 to provide a sound national currency. But the bank soon proved very unpopular in many states. Maryland levied an extremely high tax on all banks without state charters. At the time, the Second Bank of the United States operated as the **only** bank in Maryland not chartered by the state. McCulloch, the cashier of the Baltimore branch of the Bank of the United States, refused to pay the tax. Maryland sued McCulloch and won in the Maryland courts.

Officials of the bank appealed to the U.S. Supreme Court. They claimed the state tax interfered unconstitutionally with the federally chartered bank. Maryland argued that Congress had no power to charter the bank. The state claimed it had the power to tax the bank.

The Constitutional Issue

The Constitution did not expressly give Congress the power to charter a national bank. However, Article I, Section 8, Clause 18 did grant Congress the power to "make all laws which shall be necessary and proper for carrying into execution the foregoing powers. . . ." Did this "necessary and proper" clause only give Congress adequate power to do those few things indispensable for carrying out its listed, or delegated, powers? Or did it ensure Congress could do nearly anything it wanted, such as chartering a national bank, to exercise its delegated powers?

In addition, did states have the power to tax a national bank? Which was supreme, national law or state law?

The Decision

In a unanimous decision, the Court upheld the power of Congress to create a national bank. Chief Justice John Marshall wrote that the Constitution did not need to expressly authorize Congress to establish a bank. Such expressly listed Congressional powers as the power to tax, to spend money, to borrow money, and to support the Army and Navy implied Congress had the power to do so.

At the same time, the Court ruled that the states could not tax the bank. Marshall declared that allowing states to tax part of the national government would interfere with national supremacy. "The power to tax involves the power to destroy. . . ."

Thus, the Court established two important constitutional principles. The first, the **implied powers doctrine,** stated that the legal system should interpret broadly the "necessary and proper" clause of the Constitution to let Congress choose the means it wished to employ to carry out the powers the Constitution expressly gave it. Marshall wrote, "Let the end be legitimate, let it be within the scope of the Constitution, and all means which are appropriate. . .which are not prohibited. . .are constitutional." Today, many bills Congress passes to some extent draw their legitimacy from the "necessary and proper" clause.

The second principle, **national supremacy,** forbids the states to intrude into the constitutional operations of the national government. The Court's decision allowed the young national government to expand to meet the demands of a growing nation. Thus, it allowed the Constitution to become a "living" document.

WORKSHEET: *McCULLOCH V. MARYLAND* (1819)

1. Why did the State of Maryland sue McCulloch?

2. Who had created the Second Bank of the United States?

3. How did the "necessary and proper" clause relate to the issue in this case?

____ a. Maryland claimed it had the "necessary and proper" authority under Article I to tax the national bank set up by Congress.

____ b. The national government claimed Congress had authority under the "necessary and proper" clause to create a bank even though the Constitution did not mention such a bank.

____ c. McCulloch claimed the "necessary and proper" clause gave the Supreme Court the power to decide the case.

4. Which side won the decision? ____________

5. What two constitutional principles did the Court's decision establish?

a. ______________________________

b. ______________________________

6. Which of these statements about the Supreme Court's decision is correct? Be prepared to defend your answers.

____ a. Article I, Section 8, Clause 18, U.S. Constitution gives Congress the power to do more than the Constitution permits it to do.

____ b. The additional powers, beyond those listed, are called **reserved** powers.

____ c. A state government's action may not limit the national government's action.

____ d. A state, such as Maryland, is the final judge over what takes place within its boundaries.

7. The following are four hypothetical congressional actions. Which does the Constitution allow, under the implied powers? Which does it not allow? Be prepared to explain your answers.

____ a. In order to maintain military strength, the Congress passes a law which allows the United States to draft men into military service.

____ b. The Congress believes that all citizens must have military training and passes a law requiring all ministers, priests, and rabbis in the country to give sermons supporting military training.

____ c. With the U.S. government experiencing financial trouble, the Congress passes a law allowing the President to appoint citizens "Lords and Ladies of the United States." In return these "Lords and Ladies" agree to donate large sums of money to the United States Treasury.

____ d. A back log of cases clog the federal court system. In order to reduce the buildup, Congress creates a series of special courts to hear certain kinds of cases.

V-3. *DARTMOUTH COLLEGE V. WOODWARD* (1819)

A charter from King George III originally established Dartmouth College. After the formation of the United States, the agreement with the King became an agreement with the State of New Hampshire. In 1816 that state's legislature passed several amendments to the college's charter. These amendments had the effect of changing the private college into a state university.

Officials and friends of Dartmouth College objected. They believed the state legislature should not possess the authority to destroy the private nature of their college. Such a radical innovation would change the nature of the college from what its founder had intended.

Daniel Webster, arguing for the college trustees, maintained that the legislature had violated Article I, Section 10, of the Constitution which provides that "No state shall . . . pass any. . . law impairing the obligation of contracts." In an 1810 case, the Supreme Court had ruled that a land grant is a contract. Webster now argued that "a grant of corporate powers and privileges is as much a contract as a grant of land."

The Constitutional Issue

Is a charter a contract? Did the Constitution's contract clause protect private corporate charters, such as Dartmouth's?

The Decision

The Court decided 5-1 in favor of Dartmouth College. Chief Justice John Marshall's opinion held that the charter of a private corporation was a contract. Thus, the U.S. Constitution forbade the state legislature to change that agreement.

Significantly, the decision increased the power of the national government over the states. It reaffirmed that the U.S. Supreme Court could invalidate state laws when it found those laws unconstitutional. Further, along with *Fletcher v. Peck* (1810), the case began the practice of imposing restrictions upon state legislatures with regard to corporations. The national government would not allow state legislatures to void or change existing charters.

The *Dartmouth College* decision did not attract the attention of the press at the time. Yet it deserves recognition as one of the early Court's important decisions. Business corporations were just forming in a young nation. The Court's decision gave business corporations security against unexpected legislative interference.

Such security was vital to those who might invest money in new industries and corporations. Investors could be sure that any rights granted a corporation by one state legislature could not be taken away by some future legislature. Such assurances encouraged investment in railroads and other new industries which in turn stimulated the country's economic development. The *Dartmouth College* case did not, however, prevent states from regulating corporations. The decision merely held that a state government could not alter corporate charters it had already granted, unless the state reserved the right to do so when it initially granted a charter.

After the resolution of the *Dartmouth College* case many state legislatures placed restrictions on companies they chartered. These new corporate charters often contained clauses allowing the state, under certain circumstances, to revoke the charters or to buy the companies. Nevertheless, the *Dartmouth College* decision encouraged investors by assuring them that the Supreme Court would regulate state grants and charters, and that after the granting of a charter the grantees could expect the courts to protect whatever rights that charter granted them.

WORKSHEET: *DARTMOUTH COLLEGE V. WOODWARD* (1819)

1. In this case, who was complaining about a violation of contract?

____

2. What relevance did Article I, Section 10 of the Constitution have for the complaint in this case? Select the correct answers from among the following statements. Be prepared to explain your answers.

____ a. Dartmouth argued that a charter is a contract. Therefore, the legislature could not overturn the terms of that charter.

____ b. The trustees of the College believed the legislature had violated their contract with New Hampshire.

____ c. The legislature believed they could amend charters granted by earlier legislatures.

3. Did the decision in this case favor:

____ a. Dartmouth College trustees

____ b. New Hampshire legislature

4. What rights did the winners in this case gain?

____

____

5. How did the justices use the Constitution to support their decision in this case? Hint: What meaning did the Court give to **charter**?

____

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____

6. Which of the following statements are correct about the effects of this decision on America?

____ a. It increased the power of the states.

____ b. It encouraged the growth of business organizations.

____ c. It allowed state legislatures to control business to a great extent by changing bad charters.

____ d. It increased the power of the national government over the states.

V-4. *GIBBONS V. OGDEN* (1824)

In 1807, Robert Fulton made the first successful steamboat run from New York City to Albany. The New York legislature soon granted Fulton and a partner the exclusive right to navigate the waters of New York State. In turn, Fulton and his partner sold Aaron Ogden the right to operate between New York City and the New Jersey shore of the Hudson.

Meanwhile, Thomas Gibbons secured a coasting license from the U.S. Congress to run two steamships between New York and New Jersey. Competition between Gibbons and Ogden became fierce. Finally Ogden petitioned the New York courts to order Gibbons to discontinue his business. They decided in Ogden's favor, and Gibbons appealed the New York court's decision to the Supreme Court.

Gibbons argued that under the Constitution, Congress had complete power to regulate interstate commerce. Therefore, his federal license to operate steamboats remained valid despite the untenable ruling of the New York State court. Ogden countered that the congressional commerce power applied only to the "transportation and sale" of goods, not to navigation. The states should regulate navigation. Therefore, his superior New York license invalidated Gibbon's license.

The Constitutional Issue

The case raised two issues. First, what did "commerce" include? Did Congress have the power under the commerce clause (Article I, Section 8) to regulate navigation? Second, did Congress hold an exclusive power or did the states also possess the power to regulate interstate commerce within their boundaries?

The Decision

The Court ruled for Gibbons. In doing so, it defined commerce broadly. Commerce is more than traffic, the Court said. It includes all kinds of business and trade "between nations and parts of nations [the states]" including navigation.

The Court also ruled that, should a state law regulating commerce interfere with a federal law, the federal law was always supreme. Consequently, the New York law giving Ogden his monopoly was invalid. The New York law interfered with the federal coasting law under which Gibbons acquired his license.

The Court, however, did not resolve the second issue in the case of whether or not states could regulate areas of commerce Congress had not regulated. Nor did the Court decide whether the states could simultaneously regulate commerce the Congress was regulating. These issues would have to wait to be settled over the next several decades in many additional Court rulings.

The **Gibbons** case, however, established a basic precedent. The Court's decision initiated a vast expansion of federal control. It paved the way for later federal regulation of transportation, communications, buying and selling, and manufacturing. In the twentieth century, for example, the Court has said Congress may fine a farmer under the "commerce clause" for producing a small amount of wheat for his own use in violation of the quota set by the Department of Agriculture. Little economic activity remains outside the regulatory power of Congress today.

WORKSHEET: *GIBBONS V. OGDEN* (1824)

1. Where did Aaron Ogden procure his license to operate steamboats?

____

____

2. Where did Thomas Gibbons obtain his license to operate steamboats?

____

____

3. Why did Ogden petition the New York courts?

____

____

4. Why did Gibbons appeal the decision of the New York courts to the Supreme Court?

____

____

5. How did Gibbons use the "commerce clause" of the Constitution to support his position?

    ____ a. He claimed that the clause gave the President authority to invalidate all state licenses.

    ____ b. He claimed that the clause gave Congress power to regulate navigation and hence to grant his license.

    ____ c. He claimed that the clause allowed the Supreme Court to issue the necessary licenses.

6. Who won the case? ____________________

7. How did the Court define **commerce** in this decision?

____

____

____

____

8. Which of the following statements about the outcome of this case are correct?

    ____ a. Congress may regulate any matter that affects interstate commerce.

    ____ b. Congress' power over commerce stops at the state line.

    ____ c. Federal laws regulating commerce supersede state laws, should they conflict.

V-5. *CHARLES RIVER BRIDGE V. WARREN BRIDGE* (1837)

In 1828, the State Government of Massachusetts granted a charter for construction of a bridge across the Charles River to connect Boston with Cambridge. This new bridge, the Warren Bridge, was to span the river near an older bridge, the Charles River Bridge. Owners of the Charles River Bridge Company said that their charter, which they obtained in 1785, gave them the right to prevent the construction of a new bridge. They claimed the new bridge could cause them to lose profits by attracting the patronage and the payments of those who had formerly used their bridge.

Owners of the Charles River Bridge Company argued that in violating their charter the creation of the Warren Bridge Company violated the "contract clause" of the United States Constitution. They pointed to the Supreme Court decision in *Dartmouth College v. Woodward*, 1919, which seemed to support their argument that the state should not violate the terms of a contract. They complained that the Court should not allow the Warren Bridge Company to compete with them.

The Constitutional Issue

Should a contract granted by a state government be interpreted so as to stop the state from granting another charter to build new public facilities that would meet important public needs?

The Decision

The court ruled against the Charles River Bridge Company, in a 5-2 decision. Chief Justice Roger Taney wrote the majority opinion, which emphasized that a state must interpret public charters so as to benefit public and community needs. Thus, the State of Massachusetts had the right, under the Constitution, to charter the building of a bridge that would compete with another bridge it had contracted for earlier.

Chief Justice Taney was not ignoring the "contract clause" in Article I, Section 10 of the Constitution, which says that "No state shall . . . pass (any) law impairing the Obligation of Contracts." He believed in private property rights and the sanctity of contracts. However, he opposed any interpretation of a contract that infringed upon the rights or needs of the public. The contract granted to the Charles River Bridge Company did not say that no other company could build a bridge nearby. Thus, Taney and the majority of the Court would not interpret the contract as giving exclusive rights to the older and established Charles River Bridge Company.

This decision opposed business monopolies that hurt the public. It encouraged private businesses to compete freely with one another. The Court supported the right of state governments to decide, under the Tenth Amendment, whether or not to grant new charters to build new facilities such as highways, railroads, and bridges to serve the public.

WORKSHEET: *CHARLES RIVER BRIDGE V. WARREN BRIDGE* (1837)

1. In this case, who was complaining about violation of a contract?

____

2. What did the "contract clause" of the Constitution have to do with the complaint in this case? Select correct answers from among the following statements. Be prepared to explain your answers.

 ____ a. The "contract clause" says that no state government has the right to pass a law overturning the terms of a contract the state has made with a private business. The Charles River Bridge Company argued that the State of Massachusetts violated this part of the Constitution.

 ____ b. Owners of the Warren Bridge believed that the State of Massachusetts had violated their contract with the Charles River Bridge Company.

 ____ c. Owners of the Charles River Bridge believed their contract banned the construction of any other bridge near to their bridge.

3. Did the decision in this case favor the owners of the Charles River Bridge or the Warren Bridge Company?

____

4. What rights did the winners of this case gain?

____

____

____

____

____

5. How did the majority use the Constitution to support the decision in this case? (Clue: How did the majority interpret the meaning of the "contract clause" of the Constitution?)

____

____

____

____

____

____

6. Which of the following statements about the effects of this decision on Americans are correct? Be prepared to explain your answers.

 ____ a. It encouraged competition between businesses.

 ____ b. It supported the right of state governments to make certain kinds of decisions.

 ____ c. It encouraged the growth of transportation facilities used by the public.

 ____ d. It weakened property rights in contracts.

V-6. *DRED SCOTT V. SANDFORD* (1857)

When it was written in 1787, the Constitution, in effect, permitted slavery. Many of the founders owned slaves. Others opposed slavery.

They hotly contested the issue of how to deal with slavery during the Constitutional Convention, and the problem of slavery continued to plague the new nation. By the 1850s some states had forbidden slavery while others still protected it.

In 1834, Dred Scott, a slave, was taken by his master to Rock Island, Illinois, a town in a free state. His master later took him to the Wisconsin Territory, where the Missouri Compromise of 1820, a federal law, had forbidden slavery. His master then brought Scott back to Missouri, a slave state. Scott brought suit against his master claiming himself a free man because he had resided in areas which had banned slavery.

The Constitutional Issue

The case involved three issues: (1) Scott had lived in the free state of Illinois. Did he become free while living there? Should Missouri have to recognize that freedom? (2) Scott had travelled to the Wisconsin territory, which Congress had declared a free territory in the Missouri Compromise of 1820. Did he become free while living there, and should Missouri have to recognize that freedom? (3) Did the Supreme Court have the power or *jurisdiction* to hear this case?

Scott's Claim

Scott claimed that by bringing him to Illinois his master had freed him. Illinois did not allow slavery. Therefore, any slave brought there became free. Once Scott became free in Illinois no Missouri law could turn him into a slave again. Scott's lawyers further argued that Missouri should recognize the laws of another state in the Union.

Scott also claimed that he was free under the Missouri Compromise. Passed by Congress and recognized as the law of the land since 1820, the Missouri Compromise prohibited slavery in all the federal territories north of Missouri. When Scott's master brought him to Fort Snelling, (in the Wisconsin Territory) in what would become the State of Minnesota, Scott had also become free. Even if Missouri chose not to recognize the laws of Illinois, the Constitution required all states to recognize the laws of Congress, as the supremacy clause of the Constitution (Article VI, Paragraph 2) clearly stated.

Finally, Scott's lawyers argued that the Supreme Court had the power to hear this case. Article III, Section 2 of the Constitution established the jurisdiction (authority to hear cases) of the federal courts. This jurisdiction extended to cases "between citizens of different states." Scott's master was now dead, leaving him technically under the control of his dead master's brother-in-law, John F. A. Sanford, who lived in New York (notice that the case is called *Scott* v. *Sandford* because during the proceedings a clerk misspelled the name of the defendant). Scott claimed that if he was free then he had to be a citizen of Missouri. As such, he could sue a citizen of New York in federal court.

The Decision

By a 7 to 2 vote, the Supreme Court ruled against Scott on all three issues. In an extraordinary decision, all nine judges wrote opinions that totaled 248 pages. Chief Justice Roger B. Taney's fifty-five page "Opinion of the Court" expressed the collective view of the majority.

Taney first asserted that Scott could not sue in a federal court, because he was not a citizen of the United States. Taney asserted that no black person, slave, or free, could positively be a citizen. Taney wrote "The question is simply this: Can a negro, whose ancestors were imported into this country, and sold as slaves, become a member of the political community formed and brought into existence by the Constitution of the United States...?" Taney answered his own question: "We think they are not...included, and were not intended to be included, under the word 'citizens' in the Constitution..." Rather, Taney asserted that at the time the Constitution was written, blacks were "considered as a subordinate and inferior class of beings, who had been subjugated by the dominant race, and whether emancipated or not...had no rights or privileges but such as those who held the power and the Government might choose to grant them."

Having concluded that Scott had no right to sue in a federal court, Taney might have stopped. However, the issue of slavery in the federal territories was an important political question, and Taney wanted to let the nation know where the Court stood on it. So, Taney examined Scott's other claims.

The Court easily disposed of the claim to freedom based on Illinois law. Taney held that Scott lost whatever claim to freedom he had while in Illinois when he left the state, and no state or precedent obligated Missouri to enforce the Illinois law.

Scott's claim based on the Missouri Compromise presented more complications. Considering the Missouri Compromise, passed by Congress in 1820, as the law of the land would obligate the State of Missouri to recognize it. Taney, however, decided that the ban on slavery in the Missouri Compromise was unconstitutional. Taney reasoned that the territories belonged to all the citizens of the United States. Under the Constitution's Fifth Amendment no one could deprive a person of his property without "due process of law" and "just compensation." But, the Missouri Compromise would deprive men like Scott's owner of their property simply for entering federal territories. Thus, the Court held that the Missouri Compromise was unconstitutional. For only the second time, the Supreme Court declared an act of Congress unconstitutional.

In a sixty-nine page dissent, Justice Benjamin R. Curtis took Taney to task at every point. Curtis pointed out that at the time of the ratification of the Constitution blacks voted in a number of states, including Massachusetts, Pennsylvania, and North Carolina. Thus, Curtis argued, free blacks had always been citizens of the nation, and if Scott was free the Court had jurisdiction to hear his case. Curtis also argued in favor of the constitutionality of the Missouri Compromise, which he pointed out had existed as accepted law for more than three decades and served as the basis of the sectional understanding that kept the North and South together in one Union.

Taney had hoped to settle the issue of slavery in the territories through the Dred Scott verdict. Instead, Taney's decision itself became a political issue. Lincoln and Douglas argued over its merits in their famous debates of 1858. Instead of lessening sectional tensions, Taney's decision exacerbated them and helped bring on the Civil War.

With the Civil War finally over, the Thirteenth Amendment (1865) ended slavery. The Fourteenth Amendment (1868) gave blacks citizenship. Thus, amending the Constitution overturned the Dred Scott decision.

WORKSHEET: *DRED SCOTT V. SANDFORD* (1857)

1. What question did Dred Scott bring to the Supreme Court?

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2. What facts made Scott think he could sue for his freedom?

____

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3. Did the Court rule for or against Scott?

____

4. Which of the following statements explain the Court's ruling in the Dred Scott case?

____ a. Under the Constitution slaves could not be citizens.

____ b. Slavery was to be prohibited in all new territories.

____ c. The Thirteenth Amendment ending slavery was unconstitutional.

____ d. Congress had no constitutional authority to ban slavery in territories like Wisconsin.

5. Why did the Court rule that the Missouri Compromise was unconstitutional? (Clue: How did the Court interpret the Fifth Amendment?)

____

____

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____

____

6. Which of the following amendments eventually overturned the Dred Scott decision? Explain what each amendment you choose did.

____ a. The Tenth Amendment

____ b. The Thirteenth Amendment

____ c. The Fourteenth Amendment

____ d. The Seventeenth Amendment

V-7. *EX PARTE MILLIGAN* (1866)

In 1864, the general in command of the military district of Indiana arrested Lambdin P. Milligan. The Civil War still raged in other parts of the country. Federal agents alleged they had evidence of a conspiracy by Milligan and others to release and arm rebel prisoners so they could take part in a Confederate invasion of Indiana.

The army brought Milligan before a special military court instead of before the regular civil courts that were still operating in Indiana. The military court convicted Milligan of conspiracy and sentenced him to death.

Early in the Civil War, President Lincoln had placed some sections of the country under military rule and replaced civilian courts with military ones for those accused of insurrection. Lincoln also suspended the *writ of habeas corpus* in such situations. A *writ of habeas corpus* orders an official who has a person in custody to bring the prisoner to court and explain why he is detaining the person. This basic civil liberty prevents arbitrary arrest and imprisonment.

Article I, Section 9 of the Constitution says, "The privilege of the *writ of habeas corpus* shall not be suspended, unless when in cases of rebellion or invasion the public safety may require it." Lincoln believed his order, later confirmed by Congress, was crucial to the preservation of the Union.

Milligan applied to a civilian court in Indiana for a *writ of habeas corpus.* He claimed his conviction was unconstitutional and asked for his right to a trial by jury in a civilian court. The issue came before the Supreme Court in 1866, a year after the Civil War had ended with the defeat of the Confederacy.

The Constitutional Issue

The appeal did not involve the question of Milligan's guilt or innocence. Rather, the Court dealt with the related constitutional issue. Could the government in wartime suspend citizens' constitutional rights and set up military courts in areas that were free from invasion or rebellion, and in which the civilian courts were still operating?

The Decision

The Court ruled against the government on this question. The Court ruled that suspending the right of *habeas corpus* and trying civilians in military courts when civilian courts still operated violated the Constitution.

The Court declared that the civilian courts had been open in Indiana, and that the state had been far removed from the battle zone. Thus, neither the President nor Congress could legally deny to an accused person a civilian trial by jury and due process of law as guaranteed by the Constitution.

The *Milligan* decision represented a great victory for American civil liberties in times of war or internal turmoil. The Court upheld the principle that civilian authorities should control the military even in times of great stress and emergency. Moreover, it reaffirmed that the right of citizens to due process of law remains absolute as long as civilian courts are operating.

WORKSHEET: *EX PARTE MILLIGAN* (1866)

1. Why was Milligan arrested?

2. Who arrested and tried Milligan?

3. What is a *writ of habeas corpus*?

4. In this case, what was Milligan's complaint?

5. What does Article I, Section 9 of the Constitution have to do with Milligan's complaint?

   a. Milligan based his request for a trial by jury on this provision.
   TRUE FALSE

   b. The Secretary of War closed civilian courts under this provision.
   TRUE FALSE

   c. Lincoln based his order suspending *habeas corpus* on this provision.
   TRUE FALSE

6. Who won the case?

7. How did the Court use the Constitution to support the decision in this case? (Clue: How did the Court interpret that part of Article I, Section 9, Clause 2 which says the *writ of habeas corpus* may be suspended when . . . public safety demands it?)

8. Which of the following statements about the effects of this decision are correct? Be prepared to explain your answers.

   ____ a. Neither the President nor the Congress may suspend the *writ of habeas corpus* unless an emergency is great enough to warrant closing the civilian courts.

   ____ b. Congress and the President, acting together, may set up military tribunals in non-war areas even if the regular courts are open.

   ____ c. The Court upheld the principle of civilian control over the military.

V-8. *MUNN V. ILLINOIS* (1877)

Munn v. Illinois was the first of a famous series of cases called the "Granger cases." These cases dealt with issues resulting from the rapid growth of manufacturing and transportation companies that began after the Civil War ended in 1865.

Many of these companies, particularly those formed by railroad concerns and operators of huge grain warehouses, began to abuse the nearly complete control they had over hauling and storing farm products, especially grain. The railroads and grain warehouses charged farmers very high prices and often tried to cheat them. By the 1870s, the situation had deteriorated so much that even the *Chicago Tribune*, a newspaper known for its pro-business sympathies, called the grain warehouses "blood sucking insects."

In response to such conditions, a large, politically powerful farm group, the Grange, developed. Farmers in the Granger Movement influenced state legislatures in the Midwest to pass laws regulating the prices railroads, warehouses, and public utilities charged for hauling freight and storing grain.

The railroads and grain warehouses fought against state regulation of their businesses in the courts. They claimed the states' "Granger laws" violated the Constitution in three ways: (1) they infringed on Congress' right to regulate interstate commerce, (2) they violated the Constitution's prohibition against interfering with contracts, and (3) they violated the Fourteenth Amendment by depriving businesses of their liberty and property without due process of law.

The Constitutional Issue

The *Munn* case posed a clear and important question for a nation with rapidly developing industries. Did the Constitution permit a state to regulate privately-owned businesses?

The Decision

The Court ruled 7-2 in favor of the states. It said the Illinois state legislature could fix maximum rates for the storage of grain at Chicago and other places in the state. Chief Justice Morrison R. Waite wrote the majority opinion. Waite set forth a doctrine that both Congress and state legislatures use today to regulate many private business activities, the doctrine of "business affected with public interest."

Waite said that when the activity of a company "has public consequences and affect(s) the community at large" it is a "business affected with a public interest." Under the Constitution the states can regulate such a business and the owner of such a business "must submit to be controlled by the public for the common good."

The Court's decision established the power of state government to regulate businesses other than public utilities. Today state legislatures exercise tremendous regulatory powers. The constitutional basis for much of this activity rests directly on the Court's decision in *Munn v. Illinois.*

WORKSHEET: *MUNN V. ILLINOIS* (1877)

1. How did the railroads and warehouses abuse their power in dealing with farmers?

2. What was the Grange?

3. "Granger laws":

____ a. Regulated the activities of the Grange.

____ b. Regulated the activities of railroads and warehouses.

____ c. Established the Grange.

4. The railroads and warehourses claimed laws regulating their activities violated the Constitution because:

a. ____

b. ____

c. ____

5. What did the Court decide?

6. What is the doctrine of a "business affected with a public interest?"

7. Which of the following statements about the effects of this decision on Americans are correct? Be prepared to explain your answers.

____ a. The decision discredited the Grange.

____ b. The decision established the power of government to regulate private business.

____ c. After the decision, the railroads continued to expand and to dominate national transportation.

____ d. The decision set the precedent for today's extensive state government regulation of economic activities.

V-9. *PLESSY V. FERGUSON* (1896)

After the end of the Civil War (1865), the Thirteenth Amendment abolished slavery. However, prejudices against blacks remained strong. Southern states began to pass "Jim Crow" laws to keep blacks separated from whites. The case of *Plessy v. Ferguson* arose when a group of black leaders formed a Citizens' Committee to deliberately test the constitutionality of one such Louisiana law, the Separate Car Law.

Acting for the Citizens' Committee, Homer Plessy, a Louisiana resident who was one-eighth black, bought a first-class ticket for a train in Louisiana. Plessy took a seat in the railroad car reserved "for whites only," ignoring the coach marked "for coloreds only." When Plessy refused to move to the coach reserved for "coloreds," he was arrested. He had violated the Louisiana law requiring separate railroad accommodations for blacks and whites.

The Citizens' Committee and Plessy claimed the Louisiana law denied him "equal protection of the law" as provided in the Fourteenth Amendment. Plessy's lawyers also claimed the law violated the Thirteenth Amendment ban on slavery by destroying the legal equality of the races and, in effect, reintroducing slavery.

The Constitutional Issue

Did a state law requiring segregation of the races violate the Thirteenth Amendment ban on slavery or the Fourteenth Amendment guarantee of equal protection of the laws for all citizens?

The Decision

By an 8-1 vote the Supreme Court ruled against Plessy. The Court held that the equal protection of the law clause of the Fourteenth Amendment allowed a state to provide "separate but equal" facilities for blacks. Justice Henry Brown wrote that the Fourteenth Amendment aimed "to enforce the absolute equality of the two races before the law, but in the nature of things it could not have been intended to abolish distinctions based upon color, or to enforce social . . . equality."

The Court also ruled the Louisiana law did not violate the Thirteenth Amendment ban on slavery. Brown said a law "which implies merely a legal distinction between the white and colored races . . . has no tendency to . . . reestablish a state of involuntary servitude (slavery)."

The "separate but equal" doctrine established by the Court served to justify segregation in many states for the next half century. The **Plessy** decision reinforced state-ordered segregation, which had become a fact of life in the southern states. State laws required blacks to use separate toilets, water fountains, streetcars, and waiting rooms. Blacks had to attend different schools and remained separated from whites in prisons, hospitals, parks, theaters, and other public facilities. By 1920 segregation regulated every facet of life in the South. Blacks and whites could not eat at the same restaurants, stay in the same hotels, use the same elevators, or visit the same beaches, swimming pools, or amusement parks. Blacks and whites attended separate public schools, and in some states at the end of each school year the school board had to store the books from black schools separately from the books from white schools. One state required the segregation of public telephones, while another prohibited blacks and whites from playing checkers together.

Segregation dominated the political and judicial system as well as the social system of the South. The southern states gradually denied blacks the right to vote through the manipulation of various forms of voter qualification. Some used literacy tests, which discriminated against blacks educated in separate and decidedly **unequal** schools. The whites who administered these 'tests' often made sure that while semi-literate whites did pass, even college educated blacks did not. Some states used poll taxes, which discriminated against poor people who could not afford the tax. If you couldn't pay you couldn't vote, and many blacks were poor. Others used the "white primary." Declaring that the political parties were really private clubs, these states allowed the parties to prevent blacks from voting in the primaries. With the South of this era overwhelmingly Democratic, the winner of the Democratic primary in many Southern states always won in the general election. Thus the "white primary" effectively disfranchised blacks. There were no black jurors, no black judges, and only a few black lawyers in the court system of the South. Blacks called on to testify in court swore to tell the truth on a special Bible, reserved for them.

Born in segregated hospitals, educated in segregated schools, employed at work places that kept blacks and whites separated, and buried in the segregated cemeteries of segregated churches, the people of the South endured the all-pervasive influence of segregation. The separation of the races was the most important aspect of southern life. *Plessy v. Ferguson* gave this entire system legitimacy. Although that decision established the well-known doctrine of "separate but equal," in actual practice, separate and **unequal** was the rule throughout the South.

The "separate but equal" doctrine announced in *Plessy* affected Supreme Court rulings for the next fifty years. For decades the Court refused to examine the actual conditions in the South to determine if every equality existed along with the separateness. Not until the 1930s and 1940s did the Supreme Court begin to enforce the "equal" part of the doctrine. Not until 1954 did the Court directly face the more basic question: was separating whites and blacks an inherently discriminating act by nature ensuring unequal treatment?

One justice, John M. Harlan, dissented in the *Plessy* decision. Harlan, a native of Kentucky and a former slaveholder, argued strongly against dividing people by race. He declared: "...in the eye of the law there is in this country no superior, dominant, ruling class of citizens. There is no caste here. Our Constitution is color-blind and neither knows nor tolerates classes among citizens. . . ." Justice Harlan's view finally prevailed in 1954, when the Supreme Court overruled the *Plessy* decision in the case of *Brown v. Board of Education of Topeka.*

WORKSHEET: *PLESSY V. FERGUSON* (1896)

1. What were "Jim Crow" laws?

____

____

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2. What law led to Homer Plessy's arrest?

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3. Who was Plessy acting for when he refused to sit in the coach "for coloreds only"?

____

____

4. Which two amendments did Plessy claim the Louisiana law violated?

____ a. The Tenth Amendment

____ b. The Thirteenth Amendment

____ c. The Fourteenth Amendment

____ d. The Seventeenth Amendment

5. Did the Court rule for Louisiana or Plessy?

____

6. What rights did blacks lose as a result of the decision in this case?

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____

7. Which statements describe the effect of the "separate but equal doctrine" established by this case?

____ a. Future justices limited themselves to considering whether separate facilities for blacks were equal.

____ b. The decision prevented states such as Louisiana from discriminating effectively against blacks.

____ c. The decision gave Congress separate but equal powers to enforce segregation laws.

____ d. The decision encouraged states such as Louisiana to pass more laws separating blacks and whites in public facilities.

V-10. *NORTHERN SECURITIES COMPANY ET AL. V. UNITED STATES* (1904)

J. P. Morgan, James J. Hill, and Edward H. Harriman were powerful stock market speculators and investors mainly interested in railroads. Each desperately desired to control the three leading railroads linking the Great Lakes and the Pacific Northwest. In 1901 they battled fiercely on the stock exchange to gain control of the railroads. None of the three succeeded, so they settled their differences and joined together to form the Northern Securities Company to control the three railroads. They chartered their company under New Jersey laws.

In 1890, however, Congress had passed the Sherman Anti-Trust Act in an effort to prevent the growth of business monopolies. This law prohibited combinations "in restraint of trade or commerce among the several States. . . ." Congress had the power to write that law under the "commerce clause" which the Supreme Court case *Gibbons v. Ogden* had defined broadly. But the Act was vague. What did "restraint of trade and commerce" mean?

The government argued that the Northern Securities Company was guilty of the very thing the law forbade. The Sherman Act aimed to prevent monopolies from taking over an industry of an aspect of an industry. The Northern Securities Company controlled **all** of the major railroads throughout a huge section of the country. If the Court allowed the three competing railroads to merge into one giant company, competition in the area would disappear. As people have no alternative method of transportation, the Northern Securities Company would be able to charge them exorbitant fees. Serving the narrow interests of Morgan, Hill, and Harriman, this monopoly would harm the public and nation.

The Northern Securities Company argued that the federal government could not interfere with its affairs because it was merely a holding company created by a stock transaction. Legally under New Jersey laws, the corporation did not deal in commerce. Federal government interference would violate state sovereignty as protected by the Tenth Amendment.

The Constitutional Issue

The Supreme Court faced two issues in this case. First, was a specific legal question. Did the combination of railroads in the Northern Securities Company represent a "restraint on trade or commerce" covered by the Sherman Anti-Trust Act? Or was the combination just a stock transaction, not commerce? If the latter, it merited legal recognition under New Jersey law and Tenth Amendment protection.

As often happened in Supreme Court cases, however, this specific question represented a larger, more general issue. Could the national government regulate the activities of the huge, powerful businesses that were developing in the nation? A decision in favor of the Northern Securities Company would greatly limit the effectiveness of the Sherman Anti-Trust Act and the ability of the government to gain some control over businesses.

The Decision

The Court ruled 5-4 in favor of the government. The Court found that the Northern Securities Company intended to eliminate competition among the railroads involved. Hence, the company, "a combination in restraint of interstate. . .commerce," was illegal under the Sherman Anti-Trust Act.

Thus, the Court interpreted the Act broadly. Justice John Harlan wrote that a combination of businesses, a trust, did not need to directly engage in commerce to violate the Act. If it restrained commerce in any way, a trust was illegal.

Dismissing the argument that the Sherman Act violated state sovereignty, Harlan said a state law could not confer immunity from federal law. In regulating interstate commerce, Congress superseded the states' exercising their power to create corporations. Acting within its legitimate sphere, such as in regulating commerce, the national government was supreme.

The Court's decision helped establish increased government control of trusts and monopolies. The *Northern Securities* case symbolized the federal government's right and duty to regulate the national economy. The Court's ruling gave President Theodore Roosevelt the authority to begin to exercise stricter control over and supervision of the growing number of large American corporations.

WORKSHEET: *NORTHERN SECURITIES COMPANY ET AL. V. UNITED STATES* (1904)

1. In this case, what charge did the government bring against the Northern Securities Corporation?

2. What did the Constitution have to do with the case? Select correct answers from among the following statements. Be prepared to explain your answers.

____ a. Congress had the power to pass the Sherman Anti-Trust Act because of the commerce clause in the Constitution.

____ b. The Constitution forbids the regulation of stock transactions of any kind.

____ c. The Northern Securities Company argued it was not engaged in commerce of any kind and thus not subject to federal government regulation.

____ d. The Northern Securities Company accused the government of violating the Tenth Amendment guarantee of state sovereignty.

3. Did the decision in this case favor the Northern Securities Company or the United States Government?

4. What did the winner gain from the decision in this case?

5. How did the Court clarify federal-state relations in this decision? (Clue: What happens when a national act conflicts with a state action?)

6. Which of the following statements about the effects of this decision are correct? Be prepared to explain your answers.

____ a. The decision gave railroads the go-ahead to expand.

____ b. Holding companies and other business combinations do not need to engage directly in interstate commerce to be subject to federal regulation.

____ c. The decision greatly expanded the federal government's right to control business.

V-11. *MULLER V. OREGON* (1908)

In the early 1900s state legislatures began passing laws aimed at reforming working conditions. Employers soon challenged the new laws. As a result, the Supreme Court began to face questions on the constitutionality of these reform laws.

A case arose in 1907 that dramatically changed **how** the Supreme Court made decisions about such social legislation. In that year, Curt Muller, a Portland, Oregon, laundry owner was charged with violating an Oregon law setting a maximum ten-hour work day for women working in laundries. Muller challenged the law as a violation of his "liberty to contract" as guaranteed by the Fourteenth Amendment.

Muller argued that the "due process" clause of the Fourteenth Amendment prevented the state from interfering with his liberty to enter into any contracts, including those setting wages and hours for workers, necessary for running his business. The Supreme Court had supported this interpretation of the Fourteenth Amendment in several earlier cases.

Louis D. Brandeis, a brilliant lawyer later to be a famous Supreme Court Justice, argued the case for Oregon. Brandeis took a startling new approach. He presented sociological, medical, and statistical information to show that long hours of hard labor had a harmful effect upon women's health. He claimed the Court must consider whether the Oregon law was a reasonable attempt to protect public health and safety. A state law might be allowed to interfere with the Fourteenth Amendment guarantee of liberty of contract if it could be justified as protecting public health against real dangers.

How could the Court decide when a state law met such a standard? Brandeis argued that the Court could not merely rely on legal precedents and the vague words of the Constitution in judging such cases. It also had to consider relevant facts about the social conditions that led to the law in the first place.

The Constitutional Issue

Brandeis defined the question before the Court. Did the consideration of social conditions justify the Oregon law's interference with the Fourteenth Amendment guarantee of liberty of contract?

Would the Court accept Brandeis' novel thesis that it should consider relevant social facts in deciding the case? Or would the Court, as in the past, decide the case strictly through reference to legal arguments?

The Decision

The Court accepted Brandeis' argument. It ruled unanimously to uphold Oregon's law. The factual evidence Brandeis supplied proved convincing. The Court ruled that longer working hours might harm women's ability to bear children. Thus, the state's limitation of those hours was a justified interference with liberty of contract and property and within the state's police power.

The *Muller* case established that lawyers might use social facts and statistics as well as strictly legal arguments in the briefs they presented to the Supreme Court. A brief is a document a lawyer gives to a court presenting his argument in a case.

Today we call a brief that contains substantial non-legal data a **Brandeis brief.** Ever since the *Muller* case, lawyers have used relevant social data in their arguments before the Court. When deciding cases, the Supreme Court also has recognized that information about social conditions may sometimes supplement legal principles.

WORKSHEET: *MULLER V. OREGON* (1908)

1. What illegal act was Carl Muller accused of?

____

____

____

2. Muller claimed the Fourteenth Amendment protected his right to:

   ____ a. Hire only white, male workers.

   ____ b. Make whatever contracts about working hours he wanted.

   ____ c. Vote in national elections like any other citizen.

3. What new element did Louis D. Brandeis include in his argument in behalf of Oregon?

____

____

____

____

____

4. Did Brandeis argue that the Court should ignore the Constitution in deciding the case? Yes No

Explain your answer.

____

____

____

____

5. Who won the case? ______________________________

6. What is a Brandeis brief?

____

____

____

7. Which of the following statements about the effects of this decision on Americans are correct. Be prepared to defend your answer.

   ____ a. Special legislation may deal with social problems.

   ____ b. Individual rights may be destroyed for the benefit of the many.

   ____ c. The Court may consider sociological and scientific data, not just the law, in determining the constitutionality of legislation.

   ____ d. A class of people may receive special attention from the law.

V-12. *SCHENCK V. UNITED STATES* (1919)

During World War I, Congress passed the Espionage Act of 1917. This law made it illegal to encourage insubordination in the armed forces or to use the mails to distribute materials urging resistance to the government.

Charles Schenck, general secretary of the Socialist Party in the United States, was an outspoken critic of America's role in the war. Schenck printed and mailed about 15,000 leaflets to men eligible for the draft. The leaflets denounced the draft as involuntary servitude (slavery), a violation of the Thirteenth Amendment. The pamphlets also argued that participation in World War I did not serve in the best interest of the American people.

Schenck was arrested and convicted of violating the Espionage Act of 1917. At his trial, Schenck claimed his First Amendment right to free speech had been violated. The First Amendment states: "Congress shall make no law. . . abridging the freedom of speech, or of the press."

The Constitutional Issue

The specific question facing the Court was clear. Did the Espionage Act of 1917, under which Schenck was arrested, violate the First Amendment protection against free speech?

The Schenck case also posed a larger question about potential limitations on free speech. For the first time in its history, the Supreme Court directly faced the question of whether the government might limit speech under special circumstances.

The Decision

The Court decided against Schenck by a unanimous vote. Thus, the Court ruled the Espionage Act of 1917 did not violate the First Amendment rights of free speech and free press.

Justice Oliver Wendell Holmes wrote the Court's opinion. He set forth a "test" which would be used to determine when government might limit free speech. Holmes said that when spoken or written words "create a clear and present danger" of bringing about evils which Congress has the authority to prevent the government may limit speech.

Holmes reasoned that during peacetime the First Amendment would have protected Schenck's ideas. During a wartime emergency, however, urging men to resist the draft presented a "clear and present danger" to the nation. Holmes declared: "When a nation is at war, many things that might be said in time of peace are such a hindrance to its efforts that their utterance will not be. . . protected by any constitutional right."

The *Schenck* decision established important precedents. First, it set up the "clear and present danger" doctrine. This formula has applied to many free speech cases since that time. In addition, the decision announced that certain speech may be permissible in peacetime but not in wartime. Thus, the *Schenck* case established that the First Amendment protection of free speech is not an absolute guarantee. Under conditions such as those Holmes described, the government may constrain speech.

WORKSHEET: *SCHENCK V. UNITED STATES* (1919)

1. The Espionage Act of 1917 prohibited Americans from traveling abroad.

   TRUE FALSE

2. Why was Charles Schenck arrested?

   ____
   ____
   ____
   ____

3. Schenck argued that the ________ Amendment protected him.

4. What did the Court decide?

   ____
   ____
   ____
   ____

5. What was the "clear and present danger" rule?

   ____
   ____
   ____
   ____

6. Would Schenck's speech have been permitted during peacetime? __________ Explain.

   ____
   ____
   ____
   ____

7. Which of the following statements about the effects of this decision on Americans are correct. Be prepared to explain your answers.

   ____ a. The decision imposed some limits on the right of free speech.

   ____ b. The decision protected the right of free speech against all limits.

   ____ c. The Court developed a formula for deciding future free speech cases.

   ____ d. The Court established clearly that no distinctions existed between speech during times of peace or of war.

V-13. *SCHECHTER POULTRY CORP. V. UNITED STATES* (1935)

During the early 1930s President Franklin Delano Roosevelt fought the Great Depression by proposing many economic recovery programs. The centerpiece of FDR's efforts was the National Industrial Recovery Act (NRA) of 1933.

Under the law, Congress granted the President authority to approve codes of fair competition for different industries. Drawn up by trade and industry groups themselves, each of these codes included standards for minimum wages and hours. Presidential approval of the code for an industry gave that code the force of law.

By 1935 many industries had started to ignore the NRA because the Supreme Court appeared to view the law as unconstitutional. The government decided to bring a test case before the Supreme Court. A Supreme Court ruling in favor of NRA codes would encourage industries to accept the codes.

Thus it happened that a case involving four brothers running a poultry business became a key test of FDR's economic recovery program. The Schechters bought live poultry outside New York State and sold it in New York City. The government convicted the four brothers of violating several provisions of the NRA live poultry code in order to keep their prices below those of their competitors. Prosecutors also charged them with selling thousands of pounds of diseased chickens to a local butcher. The Schechters appealed to the Supreme Court. The press called the suit the "Sick Chicken Case."

The Constitutional Issue

The case involved three questions: Did the economic crisis facing the nation justify resorting to the NRA? Did the Constitution allow Congress to delegate so much power to the President? And did the law come under Congress' power to regulate interstate commerce?

The Decision

The NRA lost on all counts. In a unanimous decision the Supreme Court ruled that the economic problems of the nation did not justify the NRA. Chief Justice Hughes wrote that "extraordinary conditions do not create or enlarge constitutional power."

Second, the Court said that under the Constitution only Congress has power to make laws. If Congress wanted to delegate any of this power to the President, it had to set clear standards to guide the executive branch in making detailed applications of the general law. The NRA was unconstitutional because, in effect, it gave trade and industry groups unregulated power to create any laws they wanted.

Finally, the Court recognized that although the Schechters bought their poultry in many states, they processed and sold it only in New York. Thus the Schechters' operation was a local concern not directly affecting interstate commerce and so beyond federal control.

The decision at first appeared to devastate FDR's New Deal economic recovery program. But by 1937 the Supreme Court began upholding new laws passed to replace many New Deal measures. The National Labor Relations Act of 1935, which the Court upheld in 1937, replaced the NRA.

The *Schechter* case established the principle that, in domestic affairs, Congress may not delegate broad legislative powers to the President without also outlining clear standards to guide the President in employing these powers. This principle stands today.

WORKSHEET: *SCHECHTER POULTRY CORP. V. UNITED STATES* (1935)

1. What was the purpose of the National Industrial Recovery Act?

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2. In *Schechter v. United States,* what complaint did the government bring against the Schechter brothers?

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3. How was the Constitution involved in this case? Select correct answers. Be prepared to explain your answers.

____ a. Congress based its right to pass the National Industrial Recovery Act on the commerce clause.

____ b. The Tenth Amendment gave New York the right to regulate intrastate commerce.

____ c. The Constitution gives Congress the lawmaking power. In this case, Congress delegated some of its power to the President.

4. Did the decision in this case favor the Schechter brothers or the United States Government?

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5. What rights did the winners in this case gain?

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V-14. *UNITED STATES V. CURTISS-WRIGHT EXPORT CORP.* (1936)

In 1934, Bolivia and Paraguay were at war. Both countries needed military weapons from abroad which American weapons makers were eager to sell to them. At the same time the American public and Great Britain wanted the United States to help end the war by stopping all arms sales to the belligerents.

On May 28, 1934, Congress passed a joint resolution giving President Franklin Delano Roosevelt authority to place an embargo on selling weapons to Bolivia and Paraguay. Four days later, FDR declared the embargo in effect because he believed it would help restore peace. The federal government later indicted the Curtiss-Wright Corporation for violating the embargo by selling weapons to Bolivia. Curtiss-Wright claimed the Constitution did not allow Congress to give the President power to declare an embargo.

The Constitutional Issue

Did Congress' joint resolution unconstitutionally delegate legislative power to the executive branch? Did Congress have authority to delegate broad discretionary powers to the President in foreign affairs?

The Decision

The Supreme Court ruled 7-1 to uphold the President's embargo. The Court distinguished between the powers exercised by Congress and the President in "external" (foreign) affairs and "internal" (domestic) affairs. The Court said that the national government could take action in conducting foreign affairs that might exceed its authority to direct domestic policy.

Writing for the majority Justice George Sutherland reasoned that since the United States had existed as a sovereign nation before the adoption of the Constitution, it retained powers to influence international affairs which were neither implied nor listed in the Constitution. These powers stemmed from the simple unspoken reality that the United States existed in a world of nations and must have powers to meet its international responsibilities like other sovereign nations. This idea explained a new precedent, the doctrine of inherent powers.

Further, the Court ruled that Congress could delegate broad discretionary powers to the President to cope with foreign affairs issues. This verdict contrasted with the Court's ruling on domestic affairs which limited Congress to only delegating legislative powers to the President if it also set clear guidelines for using those delegated powers.

The *Curtiss-Wright* decision recognized the full responsibility of the national government for foreign affairs, giving the President great freedom in directing the nation's foreign policy. Justice Sutherland wrote: "[T]he President alone has the power to speak as a representative of the nation." He described the President's power in foreign affairs as "plenary [full] and exclusive." The President is "the sole organ of the federal government in. . . international relations."

WORKSHEET: *UNITED STATES V. CURTISS-WRIGHT CORP.* (1936)

1. What events caused Congress to pass a joint resolution regarding arms sales?

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2. What power did the joint resolution delegate to the President?

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3. Under the Constitution, which branch of the national government makes the laws?

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4. Which statement best describes the key constitutional issue the case raised:

____ a. Could the legislative branch legally transfer power given to it by the Constitution to the executive branch?

____ b. Could the Supreme Court rule on the constitutionality of issues in foreign affairs?

____ c. Did the President have constitutional authority to negotiate treaties with foreign nations?

5. What did the Court decide?

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6. What is the doctrine of inherent powers?

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7. Which of the following statements about the effects of this decision are correct? Be prepared to explain your answer.

____ a. The decision halted the growth of presidential power.

____ b. Congress could delegate whatever authority it wanted to the President in foreign affairs.

____ c. The decision increased the power of the modern presidency.

V-15. *BROWN V. BOARD OF EDUCATION OF TOPEKA* (1954)

The Fourteenth Amendment declares: "No state shall. . . deny to any person within its jurisdiction the equal protection of the laws." In 1896 the Supreme Court handed down a landmark decision on the meaning of this "equal protection" clause. In *Plessy v. Ferguson* the Court ruled that the Fourteenth Amendment allowed a state to segregate whites and blacks by providing "separate but equal" facilities for blacks.

For nearly sixty years this doctrine of "separate but equal" served as a constitutional justification for segregation in the United States. This doctrine sanctioned separating blacks and whites in schools, housing, transportation, and recreation.

Not all Americans accepted the view that the Constitution allowed racial discrimination. Those opposed to segregation agreed with Justice John Harlan, who dissented in *Plessy*, declaring "Our Constitution is colorblind." In 1909 a group of black and white Americans formed the National Association for the Advancement of Colored People (NAACP) to fight segregation and racial injustice. In the 1930s and 1940s, the NAACP provided legal counsel for a number of (successful) Supreme Court cases prohibiting segregation in public universities, political primaries, and railroads. By 1950 many blacks and whites were ready to challenge the constitutionality of segregated elementary and high schools.

In the early 1950s five separate cases—from South Carolina, Virginia, Delaware, Kansas, and Washington, D.C.—made their way through the court system. In each case the parents of black school children asked lower courts to strike down laws requiring segregated schools. The NAACP provided these parents with legal help. Eventually the Supreme Court heard these cases together as *Brown v. Board of Education of Topeka.* The case received its name when Mr. and Mrs. Oliver Brown sued the Topeka, Kansas school board for denying their seven-year-old daughter Linda admission to a school only six blocks from their house. She had to leave her home at 7:40 every morning and travel over a mile in order to reach her assigned school by 9:00. The school board refused to let Linda attend the school in her own neighborhood solely because she was black and the school nearest to her home was for "whites only."

Thurgood Marshall, later a Supreme Court Justice, represented the NAACP. Marshall presented evidence showing that separating black and white students discriminated against blacks, placing them at a severe disadvantage. He argued that segregated schools were not and could never be equal. Such schools violated the "equal protection" guarantee of the Fourteenth Amendment.

John W. Davis, a distinguished attorney and a 1924 presidential candidate represented the defense. He argued that the framers of the Fourteenth Amendment never intended that article to prevent segregation in the nation's schools. Further, he claimed that the courts did not possess the authority to order the states to desegregate their schools.

The Constitutional Issue

Those states with segregated schools claimed that the dual system provided "separate **but** equal" facilities for whites and blacks. In fact, virtually no black schools were equal to white schools. The South Carolina case, for example, began when the local school board, run by whites, refused to provide school buses for black children. The board also refused to pay for heating the black schools or to provide them with indoor plumbing. In spite of these glaring inequities, the (black) plaintiffs did not argue that the school systems were "separate but **unequal.**" Rather, they accepted statements made by the attorneys for the school boards that the separate black schools had facilities equal to or soon to be equal to those in white schools. Thus, the constitutional issue clearly focused on the "separate but equal doctrine" itself. Did state-supported segregation in public schools, even when black and white schools had equal facilities, violate the equal protection clause of the Fourteenth Amendment?

The Decision

On May 17, 1954 the Supreme Court **unanimously** struck down the "separate but equal" doctrine as an unconstitutional violation of the Fourteenth Amendment. Chief Justice Earl Warren wrote the opinion.

Warren said that segregation clearly gave black children "a feeling of inferiority as to their status in the community that may affect their hearts and minds in a way unlikely to ever be undone." Even if segregated schools gave blacks access to equal physical facilities, Warren argued, they deprived students of equal educational opportunities. Thus, Warren declared:

> We conclude that in the field of public education the doctrine of "separate but equal" has no place. Separate educational facilities are inherently unequal.

The *Brown* decision destroyed the constitutional foundation of all forms of state-supported segregation in the United States. At the same time, it prompted massive resistance to school integration in many states. Resistance in turn helped spur the growth of a civil rights movement. This movement encouraged the passage of the federal civil rights acts of 1957, 1960, 1964, 1965, and 1968. These laws increased black political and civil rights.

Resistance also slowed implementation of the *Brown* decision in schools and led to many additional court cases. For example, Prince Edward County, Virginia closed all of its public schools—for whites as well as blacks—rather than integrate. The first additional case, known as *Brown II,* came in 1955 when the Supreme Court ordered school districts to begin desegregation "with all deliberate speed." In reality just the opposite occurred. Fifteen years after *Brown* only twenty percent of black students in the South attended integrated schools. Faced with continued resistance the Supreme Court ruled in 1969 that segregation must end "at once." Eventually, lower federal court rulings and the work of the federal government began to change this pattern. By 1978, forty percent of black and other minority children in the United States were attending integrated schools.

WORKSHEET: *BROWN V. BOARD OF EDUCATION OF TOPEKA* (1954)

1. What doctrine did *Plessy v. Ferguson* establish in 1896?

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2. How did the "equal protection" clause of the Fourteenth Amendment relate to the complaint in this case? Select correct answers from among the following statements. Be prepared to explain your answers.

____ a. Blacks claimed the "equal protection" clause prohibited segregated schools.

____ b. The NAACP argued that the *Plessy v. Ferguson* case guaranteed "equal protection."

____ c. In the *Brown* decision, the Court overturned the meaning given the "equal protection" clause in the case of *Plessy v. Ferguson.*

3. Which side won the decision?

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4. What rights did blacks win in this case?

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5. Which of the following statements about the effects of this decision on America are correct?

____ a. It ended segregation in the schools immediately.

____ b. It led to the passage of several civil rights laws.

____ c. It gave blacks a constitutional tool to continue to fight segregation.

6. One historian said: "The Court's decision in *Brown v. Board* remains one of the great landmarks in the history of American liberty." Why could the historian make such a claim? Do you agree or disagree? Explain.

V-16. *GIDEON V. WAINWRIGHT* (1963)

Clarence Earl Gideon, a penniless Florida drifter, was arrested for the burglary of a Florida pool hall. At his trial Gideon asked for a court-appointed attorney, since he could not afford a lawyer. The court denied Gideon's request, and he conducted his own defense.

The Florida court convicted Gideon and sentenced him to five years in prison. In his jail cell, using a pencil and pad of paper, Gideon composed a petition asking the Supreme Court to review his case.

"The question is very simple," wrote Gideon. "I requested the [Florida] court to appoint me an attorney and the court refused." He maintained that the state court's refusal to appoint counsel for him denied him rights "guaranteed by the Constitution and the Bill of Rights" in the Sixth and Fourteenth Amendments. The Supreme Court decided to review Gideon's case. Unlike the Florida court, however, the Supreme Court did not expect Gideon to argue his own case. Instead, the Court appointed Abe Fortas, a prominent Washington lawyer and a future Supreme Court Justice, to argue Gideon's case. Fortas defended Gideon "pro bono publico" (for the good of the public), donating his time and money for the cause of justice.

The Constitutional Issue

The Sixth Amendment states that "in all criminal prosecutions the accused shall enjoy the right...to have the assistance of counsel for his defense."

Despite the unmistakably clear meaning of this wording, the Supreme Court had ruled in earlier cases that in **state courts** needy defendants had a constitutional right to court-appointed lawyers in only two situations: in cases involving the death penalty (*Powell v. Alabama,* 1932) and in cases where special circumstances, such as youth or mental incompetence, required furnishing an attorney to assure a fair trail (*Betts v. Brady,* 1942).

Should the Sixth Amendment right to counsel apply to all criminal cases? Or should the Court continue to follow the precedent set in *Betts v. Brady*? In arguing the *Gideon* case, the Supreme Court asked the attorneys to specifically consider the question: should it overrule *Betts v. Brady*?

The Decision

The Court ruled unanimously in Gideon's favor and overruled *Betts v. Brady*. Thus, the Court held that the right to counsel was so fundamental that the Fourteenth Amendment "due process" clause extended the Sixth Amendment guarantee of counsel to **all** defendants in criminal cases. This ruling played a major role in requiring the states to comply with the Bill of Rights.

As a result of the ruling, the State of Florida granted Clarence Earl Gideon a new state trial in August of 1963. Represented by a court-appointed lawyer, Gideon was found innocent. In addition, the Supreme Court's decision caused states throughout the nation to review numerous cases. Defendants too poor to afford attorney's fees, who had been tried without the benefits of counsel, received retrials. The courts found many innocent and released them from prisons.

The *Gideon* case reflected the emergence of a nationwide concern with equal justice for the poor. It recognized that, left without the aid of counsel, even intelligent and educated persons have very little chance of successfully defending themselves in criminal trials.

WORKSHEET: *GIDEON V. WAINWRIGHT* (1963)

1. Why was Clarence Gideon arrested and brought to trial?

2. What constitutional right did Gideon claim the Florida court had violated?

3. Before the *Gideon* decision, in which of the following situations did the Supreme Court say a person was entitled to a court-appointed lawyer in a state trial?

____ a. When the case involved the death penalty.

____ b. When the defendant was accused of more than one crime.

____ c. When the case involved a major felony.

____ d. When the case involved special circumstances such as mental incompetence.

4. Who won the case, the State of Florida or Gideon?

5. What part did the Fourteenth Amendment play in the Court's decision?

4. Why did the Court extend the Sixth Amendment right to counsel to all state criminal cases?

7. How did the *Gideon* decision affect other prisoners around the country?

V-17. *REYNOLDS V. SIMS* (1964)

By the early 1920s the distribution of the United States population had clearly changed. For the first time more Americans were living in cities than in rural areas. This change created real inequities between the populations of urban and rural state legislative districts.

By 1960, nearly every state had some urban legislative districts populated by at least twice as many people as rural districts in the state. In Alabama, for example, the smallest House district had a population of 6,700 and the largest a population of 104,000. People's votes possess equal value when each member of a legislative body represents the same number of people. Clearly, the people in more populous urban districts were not equally represented with voters in less populous rural districts. As a result, city and suburban problems did not receive appropriate attention in state legislatures dominated by representatives from farming and rural districts.

Dominated by rural interests, state legislatures refused to redistrict to ensure that each member of the legislature would represent roughly the same number of people. Some simply ignored sections in their state constitutions requiring redistricting every ten years. Others merely redistricted in ways that continued to favor rural interests. There was little voters could do to change things through the ballot box.

Thus, during the 1960s the Supreme Court heard a series of cases challenging the apportionment (distribution) of state legislative districts. *Reynolds v. Sims* was a key case in this series. In *Reynolds* voters of Jefferson County, Alabama, claimed that the unequal representation accorded citizens of districts in Alabama violated the equal protection clause of the Fourteenth Amendment.

The Constitutional Issue

The Fourteenth Amendment declares: "No state. . . shall deny to any person within its jurisdiction the equal protection of the laws." Did Alabama, and other states, violate the equal protection rights of voters by apportioning (setting up) legislative districts that contained unequal numbers of people?

The Decision

The Supreme Court ruled 8-1 that the Fourteenth Amendment required states to establish equally populated electoral districts for both houses of state legislatures. Chief Justice Earl Warren declared that plans for setting up legislative districts could not discriminate against people on the basis of where they live (city residents in this case) any more than they could on the basis of race or economic status.

The Court rejected the idea that, like Congress, state legislatures could create districts for the Senate on an area rather than a population basis. The Constitution, which alloted equal representation to states in the Senate no matter what their size, recognized the states as "sovereign entities." Political subdivisions within a state (such as counties or regions), however, did not possess the status of sovereign entities. Thus, Warren argued, the people of a state must benefit from equal representation in **both** houses of a state legislature. "Legislators represent people, not trees or acres," Warren declared.

The Court ruled that state legislatures did not have to draw legislative districts with "mathematical exactness or precision." However, such districts did have to be based "substantially" on equal population. Thus, the Court established the key principle of "one person, one vote."

The *Reynolds* decision had a major impact on state legislatures. After the decision, forty-nine state legislatures reapportioned their legislative districts on the basis of equal population. Oregon had already done so in 1961. The decision caused a fundamental shift in American politics by declaring unconstitutional the practices which enabled rural minorities to control state legislatures. The decision also affected national politics since state legislatures draw the lines for U.S. Congressional districts.

WORKSHEET: *REYNOLDS V. SIMS* (1964)

1. What changes in the United States led to unequal state legislative districts?

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2. Which statements describe the effect unequal legislative districts had on American politics from the 1920s to the 1960s. Be prepared to explain your answers.

____ a. Some districts passed more laws than others.

____ b. Each person's vote was not worth as much as another's.

____ c. Rural districts with small populations controlled state legislatures.

____ d. Every person's vote was equal to every other's.

3. What did the Court decide?

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4. The Court ruled that each legislative district must contain exactly the same number of people.

TRUE FALSE

5. The Court held that each state must apportion both houses of a state legislature on the basis of equal population.

TRUE FALSE

6. The principle of "one person, one vote" means:

____ a. Every person can vote only once in an election.

____ b. One person's vote should have the same value as another person's.

____ c. Some people's votes are more important than other people's.

7. Which of the following statements about the impact of the *Reynolds* decision are correct. Be prepared to explain your choices.

____ a. The decision changed the balance of power between urban and rural areas in the United States.

____ b. It established the principle that all voters should be equal.

____ c. It strengthened the right of the states to make their own decisions about legislative districts.

____ d. Almost every state legislature reapportioned their districts as a result of the decision.

8. The greatest opposition to *Reynolds v. Sims* came from members of state legislatures. These men and women claimed the national government should not worry about the apportionment of the state legislatures. Why do you think members of state legislatures so adamantly opposed the decision?

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9. Some critics of *Reynolds v. Sims* argued that because the people of each state had the power to change the make-up of the legislature through the ballot, the Supreme Court should not interfere in apportioning. What flaw do you detect in this analysis of the problem?

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V-18. *MIRANDA V. ARIZONA* (1966)

During the 1960s the Supreme Court under Chief Justice Earl Warren made a series of decisions that greatly strengthened the rights of accused persons. One of the most important and controversial decisions involved Ernesto Miranda, an Arizona man, and the Fifth Amendment.

In 1963 Miranda was arrested for kidnapping and attacking a young woman near Phoenix. The woman identified him at the police station and the police questioned him for two hours. No one told him that he had the rights to refuse to answer questions or to see a lawyer. Miranda confessed. He was tried and convicted on the basis of his confession.

Miranda appealed his conviction to the U.S. Supreme Court. His lawyer claimed the police violated Miranda's Fifth Amendment protection against self-incrimination. The Fifth Amendment says: "No person . . . shall be compelled in any criminal case to be a witness against himself."

Arizona lawyers argued that Miranda could have asked for a lawyer any time during questioning. He had not done so. They also said no one had forced him to confess. Because he had given his confession voluntarily the prosecution could use it in court.

The Constitutional Issue

Does the Fifth Amendment require the police to inform suspects of their right to remain silent and to tell them that anything they said can be held against them? Could the police use evidence obtained without such warnings in court?

The Decision

In a 5-4 decision the Court struck down Miranda's conviction. The Court ruled that the Fifth Amendment requires police to inform suspects in their custody of their right to remain silent, that anything they say can be held against them, and that they have a right to a lawyer. The police must give these warnings, the Court said, before any questioning of a suspect can take place. A defendant can then voluntarily waive these rights.

The Court added that if a suspect wants to remain silent or to contact a lawyer, police interrogation must stop until the suspect is ready to talk again or a lawyer is present. The prosecution cannot use confessions obtained in violation of this rule in court.

The *Miranda* decision was controversial. Many law enforcement officials complained the decision "handcuffed the police." In a strong dissent, Justice John Harlan argued: "It's obviously going to mean the disappearance of confessions as a legitimate tool of law enforcement." Chief Justice Warren, a former prosecutor, and others defended the ruling. They argued that our system of justice is based on the idea that an individual is innocent until proven guilty. The government, they claimed, must produce evidence against an accused person. It cannot resort to forcing suspects to prove themselves guilty.

After the *Miranda* decision most police began carrying cards which they used to read suspects their rights. The card quickly became known as "Miranda cards."

WORKSHEET: *MIRANDA V. ARIZONA* (1966)

1. What crime was Ernesto Miranda charged with?

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2. Miranda claimed the police violated his constitutional rights because they:

____ a. Questioned him for two hours.

____ b. Did not tell him of his right to refuse to answer questions or to see a lawyer.

____ c. Let him go free on bail.

3. Which portion of the Fifth Amendment did Miranda claim the police violated?

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4. Did the Court rule for or against Miranda?

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5. What did Justice Harlan argue in dissent?

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6. According to the *Miranda* decision, which of the following rights must police inform suspects of before they may question them?

____ a. They have a right to remain silent.

____ b. They have a right to one phone call.

____ c. They have a right to have a lawyer present.

____ d. They have a right to reasonable bail.

7. Which of the following statements about the effects of this decision are correct? Be prepared to explain your choices.

____ a. It expanded the rights of people accused of crime.

____ b. It increased the Court's power over the executive branch.

____ c. It reduced the reliance of police on confessions to convict people.

8. If the Fifth Amendment protection against self-incrimination did not exist, what dangers might threaten the correct functioning of the legal system?

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V-19. *HEART OF ATLANTA MOTEL V. UNITED STATES* (1964)

In 1964 Congress passed the Civil Rights Act, the most comprehensive civil rights legislation since 1875. Title II of this law prohibited discrimination on the grounds of race, color, religion, or national origin in public accommodations involved in any way in interstate commerce. Title II thus sought to end discrimination in facilities including hotels, motels, restaurants, concert halls, theaters, and sports arenas.

Congress based its power to regulate such businesses on the commerce clause in Article I (Section 8) of the Constitution. The commerce clause gives Congress the power to regulate commerce among the states. A case challenging the use of the commerce power by Congress to prevent racial discrimination reached the Supreme Court only a few months after the passage of the 1964 Civil Rights law.

The Heart of Atlanta motel in downtown Atlanta, Georgia defied the new law by refusing to serve blacks. The motel owner claimed that Congress had exceeded its authority under the commerce clause by enacting Title II to regulate local businesses such as hotels open to the public.

The owner also argued that Title II violated his Fifth Amendment rights. The Fifth Amendment says that no person shall be "deprived of life, liberty, or property, without due process of law." The motel owner claimed the new Civil Rights Act regulated his private property "without due process of law."

The Constitutional Issue

The case represented a major test of a key part of the new Civil Rights Act. Clearly the Constitution gave Congress the right to regulate interstate commerce. But did this commerce power permit Congress to prohibit discrimination in privately owned accommodations open to the public such as hotels and restaurants?

The Decision

The Supreme Court unanimously upheld Title II of the Civil Rights Act as a legitimate exercise of the commerce power. Justice Tom Clark, a former Senator from Texas, wrote that the motel did engage in interstate commerce since it sought out-of-state customers by advertising in national publications and that 75 percent of its guests were interstate travelers. Citing testimony from the congressional hearing on the act, Justice Clark pointed out the difficulty blacks encountered in obtaining accommodations frequently discouraged them from traveling. The motel's discrimination obstructed interstate commerce.

Next Clark defined the meaning of the commerce power of Congress. He declared that Congress' power to regulate interstate commerce also gave it the authority to regulate local business that "might have a substantial and harmful effect" on interstate commerce.

Clark added that the fact that Congress had used its powers under the commerce clause to achieve a moral goal—stopping discrimination—had no bearing on the decision. "Congress was not restricted by the fact that the particular obstruction to interstate commerce with which it was dealing was also deemed a moral and social wrong," he wrote.

Finally, the Court rejected the charge that Title II violated the motel owner's Fifth Amendment rights to private property. "In a long line of cases this Court has rejected the claim that the prohibition of racial discrimination in public accommodations interferes with personal liberty," declared the opinion.

The Supreme Court's decision affirmed that Congress has the constitutional power to promote equality of opportunity and to prevent discrimination. The case aided the cause of the civil rights movement of the 1960s. It put a solid constitutional foundation under legislative and political efforts to promote equal rights for blacks.

WORKSHEET: *HEART OF ATLANTA MOTEL V. UNITED STATES* (1964)

1. What did Title II of the Civil Rights Act prohibit?

2. What did the commerce clause of the Constitution (Article I, Section 8) have to do with the issue in this case? Select correct answers from among the following statements. Be prepared to explain your answers.

    ____ a. Congress based Title II on its power to regulate interstate commerce.

    ____ b. The motel owner claimed the Supreme Court had no authority to rule on the commerce clause.

    ____ c. The motel owner argued that the commerce clause did not allow Congress to regulate local businesses.

3. Did the Court's decision favor:

    ____ a. The motel owner.

    ____ b. The national government.

4. How did the Court use the Constitution to support the decision in this case? (Hint: what meaning did the Court give to the **commerce power**?)

5. Which of the following statements about the effects of this decision on America are correct? Be prepared to explain your selections.

    ____ a. It increased the power of the national government over local affairs.

    ____ b. It greatly limited the ability of Congress to deal with racial discrimination.

    ____ c. It strengthened the civil rights movement of the 1960s.

6. Why should the Court allow Congress to consider motels and restaurants part of interstate commerce?

7. If there were no Civil Rights Act, what do you think it would be like for minorities who traveled?

V-20. *UNITED STATES V. NIXON* (1974)

Beginning with George Washington, several Presidents have asserted the right to withhold information from Congress or from a court. The right of the President to do this has come to be called **executive privilege.** Presidents have often made such claims in the area of foreign affairs. In 1974, however, President Richard Nixon claimed executive privilege for another reason.

In the spring of 1972, employees of President Nixon's reelection committee burglarized the Democratic Party headquarters in the Watergate office complex and planted illegal electronic bugging equipment. Eventually, seven of President Nixon's top aides, including former Attorney General John Mitchell, were indicted for their role in planning the "Watergate Break-in" (as it came to be known) and for obstructing justice by trying to cover up their actions. During Senate hearings on the break-in and the cover-up a Nixon aide admitted that secretly recorded tapes of Nixon's conversations with his aides existed. A special prosecutor investigating the Watergate break-in subpoenaed the tapes for use as evidence in the criminal investigations.

President Nixon refused to surrender the tapes. He said the principle of executive privilege protected the record of his private conversations from such a subpoena. He argued that the actions of many past Presidents established clearly the doctrine of executive privilege. He also claimed that to allow another branch of government, the courts, to obtain the tapes would destroy the separation of powers established by the Constitution and would weaken the presidency.

The Constitutional Issue

Did the constitutional principle of separation of powers and the doctrine of executive privilege prevent the courts from requiring the President to turn over confidential material needed as evidence in a criminal trial?

The Decision

The Supreme Court ruled unanimously against President Nixon. The Court ordered Nixon to turn over the tapes and other documents to the trial court for use as evidence.

Thus, the Supreme Court rejected the claim that either separation of powers or executive privilege could make the President immune from the judicial process. The Court's ruling established the precedent that, unless important military or diplomatic secrets affecting national security were involved, the need to insure a fair trial outweighed the doctrine of executive privilege. The decision limited the doctrine of executive privilege by holding that a President could not use it to prohibit disclosure of criminal conduct.

At the same time, the Court's decision acknowledged the constitutionality of executive privilege. The Constitution does not mention executive privilege, and until the Court reached this decision legal scholars had frequently debated whether any real constitutional basis supported the doctrine.

In *United States v. Nixon,* Chief Justice Burger, a Nixon appointee, said Presidents and their aides must be free to consider alternatives as they make decisions. In order to do so, they must possess the confidence to express themselves freely without fear that the public will gain access to their ideas. Thus, Burger wrote, "[executive] privilege is fundamental to the operation of government and inextricably rooted in the separation of powers under the Constitution."

Nixon obeyed the Court's decision and turned over the tapes to the special prosecutor. Nixon labeled the demand for the tapes as political. However, this claim could not stand up in the face of a unanimous decision written by a Nixon appointee and supported by two other Nixon appointees. The tapes revealed that Nixon himself had committed a number of crimes in office and had participated in the cover-up. When the content of these tapes became public knowledge, even Nixon's strongest supporters in Congress believed that he could no longer stay in office. Some Republican congressmen said they would have to vote for his impeachment and leading Republican senators publicly announced that they saw no way he could avoid conviction. Nixon became the first American President to resign. He later accepted a full pardon for any crimes he may have committed while in office.

WORKSHEET: *UNITED STATES V. NIXON* (1974)

1. What does "executive privilege" mean?

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2. In this case, who brought the complaint to the Supreme Court?

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3. How did Nixon respond to the request for his tapes? Choose the correct answers.

____ a. He destroyed all of the tapes.

____ b. He argued that giving up the tapes would "blow" the cover of some CIA agents.

____ c. He argued that a President's conversations with his aides must be kept confidential.

____ d. He argued that separation of powers prevented judicial review of his claim of executive privilege.

4. Did the decision in this case favor Nixon or the United States Government?

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5. Which of the following statements are correct about the nature of this decision?

____ a. The Court ruled that there is no constitutional basis for executive privilege.

____ b. The Court said that the need for evidence in a criminal trial is greater than the need for executive privilege.

____ c. The Court said that the effect of Article II of the Constitution is to make executive privilege unlimited.

6. In what way did the Court's decision put limits on the doctrine of executive privilege?

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7. In what way did the Court's decision strengthen the doctrine of executive privilege?

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8. Over-all, do you think the Court's decision strengthened or weakened the presidency?

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Explain. ______________________________

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